Simon Wormeley

Institu-

tions or principyal groundes of the lawes and statutes of Englande, newly and very truelye corrected and amended, with many newe and goodlye additions, verye profytable for all sortes of people to knowe, lately augmented and imprinted.

1556.

¶ The prologe of the aucthour to the reader.

Demosthenesse, the renowmed Oratour defineth law in this wyse. The law (saieth hee) is the thing that all menne oughte to obeye for many skilles but in specially bicause lawe is the inuention, and also the gyft of God, the decrees of prudent menne, the chastysement of wylful and vnwylful offences, and fynallye the common suertye of a Realme, whereby it becomineth all men to lyue, wythe bee conuersaunte in the same. Chrysyppus also, an excellent phylosopher, thus begynneth his booke of lawes.

¶ The lawe is kynge of all, as wel diuine as humayne affayres, the precydent & comptroller of thinges honest, and dishonest, the Prince, Cappytayne and ruler, of the iuste, & iniuste, & it is of Ciuile creatours, as wel the commaunder, what they oughte to do, as the forbydder, what they oughte not to doo. These auntyche sayinges of wise menne, assuredly ought much to inflame vs to the knowledge of those thiges without wyche we shal be estemed no mē, but as bruite and sauage beastes. Let vs not commytte, that it be sayde of vs Engleshemen, as it was ones sayde of the men of Athens, that is, that we make verye goodly and profytable lawes, but we vse thē not. Certaynly there can be no greater reproche to a common weale thē

this. One lesson I would we learned of ye auncient lawer Romayne named Celsus, and ye is this. The knowledge of lawes is not to beare awaye the wordes, but the pithe and power of them. This he wrote bycause there bee manye whiche when good & holsome lawes bee made seke not to see them executed, & obserued, but rather howe to defraude them and to haue the vnexecuted, which kynd of people after the sentence of moste auncient lawmakers be no lesse worthye of reprehensiō then they which do expressely against the lawe. Now, they doe (saye they) agaynst the lawe which do the thing, that the lawe forbiddeth. And they defraude a lawe or statute, which the wordes of the lawe saued, do circumuent the meaninge and sentence of it. Let vs the so reade the lawes that we may beare away the sentence and mynde of them, and so fulfyl and obserue the lawes, that it may appere that they were not made in vayne.

Thus doinge we shal please God, we shall be obediēt subiectes to our prince, and finally we shal seke our owne weale and saftye.

What is lawe.

The law is the directiō and ministration of Justice. And iustyce is(as ỳ Emperoure Justinian saieth in his Institutions)a constante and permanēt wyll to render vnto euery person his right and dutye.

¶ The learnyng or prudence of law, is a knowledge of deuine & humaine thinges, a science & perfit notice of equitie and iniquitie, of ryghte and wronge.

¶ Now for asmuche as a great porcyon of the prudence of science of the lawes of this realme of England consisteth in the perfyt knowledge of estates, whiche men haue in landes and tenementes: we shall fyrste as compendiouslye, and as a symply and playnly as we can, treate somwhat of estates.

¶ A diuisyon of estates.

We shall therefore vnderstande, that whosoeuer hath ani state in landes or tenementes, either he hath in the same onely a chatell, or a holde, or inheritaunce. If he hathe an estate but for termie of certayne yeares, or at his landelordes wyll, so it is called a chattell, if for termie of his lyfe, or of another mans life, it is called a freholde. And yf he hath to hym and to his heires in fee symple or in tayle, then he hath a state of inheritaunce.

Chatell.

Freholde

inheritāce

Tenaunt for termie of yeares.

Tenaunt for yeres.

TEnaũt for terme of yeres, is he to whõ landes or tenementes be lette for terme of certayne yeares; as is agreed betwene the landelorde and the tenaunte. And when the person to whom suche lease is made doeth enter by force of the sayd lease: is in possessyon of the same: then he is called tenaunt for terme of yeares.

Rent serued.

☞ And here ye shal note, ꝑ if the lessour, that made the lease hathe reserued vnto him a yerely rent vpõ the said lease, as it is accustomably vsed to be done, yf the rente be behynde vnpaid it shalbe in hys election either to enter and distrayne for the rent, or to bryngе an action of Dette against him at the law for the arrerages of ꝑ same. But in this case it is requisite, that the lessoure were seased of the landes or tenementes at the tyme of the makynge of the lease for otherwise it shalbe a good plee in the action of Dette for the tenaunt to say, that the lessour had nothynge in the lande and tenement at the tyme of the lease made: excepte the lease were made by dede indented, for then the plee shall not lye in the tenauntes mouthe to pleade.

Action of Dette.

A good plee.

Liuerī of season nede not in lease for terme of yeres.

¶ And it is to be knowen, that in a lease for terme of yeares, whether it be by dede or wyth out dede, there nede no lyuerye of season to bee made to the lease, but he may enter whē he will by vertue of this lease, without any further ceremony of the lawe.

¶ Also if a man lesseth landes for terme of yeares, thoughe the lessour chaunceth to dye before ꝑ lesse doth enter, yet he may enter wel inoughe Otherwise it is where liuery of season is to be made, as in free holdes and inheritaunce.

Also

¶ Also yf the tenaunt for yeare doeth waste, the ladlord may bring an action of waste agaynste hym and shall recouer the place wasted, and his treble damages. Waste

¶ Also yf a lease for yeares be maid of. ii. seuerall thinges, and after the one is recouered the lesse shall holde the other, and the rent or terme shalbe apportioned. M. 12. H. 8.

¶ Also yf the tenaunte for yeares graunteth a greater estate in the lande, than he hath himself wherby he conueyeth the fee symple to him selfe he shal forfaite his lease or terme forfaiture

☞ Tenaunt at wyl.

Tenaunte at wil, is he to whom landes or tenementes be lessed to haue & holde the same at the wyll of the lessour. And in thys case the lessoure maye put oute his tenaunte at what tyme hym lysteth. But yet neuertheles, yf the tenaunte haue sowed the grounde wyth corne, in this case if the lessour wyl enter and put oute his tenaunte before Harueste, the lawe wyl geue him free commynge and goinge to reape and cary his corne away, without any punyshemente or damages to be sustayned for hys so doynge bycause he knewe not at what tyme the lessour wouldе enter. But otherwise it is of the tenaunte for certayne yeres, for if he soweth the grounde, and the terme of the lease be come out and expired before ye corne be ripe. in this case the lessour or he in ye reuersion may enter and take the corne, bicause it was the foly of the tenaunt to sowe the grounde, knowynge the ende of his terme.

¶ In lykewyse tenaunt at wyll shall haue free

sommyng and goyng after the tyme of the lessours entre, to carye away his houshold stuffe and goods for a reasonable space.

¶ ye shall also vnderstande, that he that maketh a lease at wyl, may reserue an annuell or yeresly rente in whiche case yf the rente be behynde, he may enter very well and distraine the goodes & cateis of the tenaunt, or at his election he may bring an action of dette against hym.

Distres or els action of det.

¶ Also it is to be knowen, that tenant at will of a mese, or tenaunt is not bound by the order of the lawe to sustayne and repayre the houses that be decayed & ruinouse, as is the tenaunte for yeares, and therefore no actyon of Waste, lyeth against hym. yet if he do wilfull waste, as yf he plucketh downe the houses, or cutteth downe the trees: it hath bene thought by the sages of the lawe, that the lessoure may bring an action of Trespas agaynst hym, and shal recouer his losses therby sustayned.

Waste.

Trespas.

¶ And yf suche a tenaunt dye and hys heire entre, in that case the lessour maye haue an action of Trespas agaynst the heyre.

Tenaunt by copy of court rolle.

There is an other kynde of tenaũt at wil whiche is called tenaunt by coppye of ye court rolles. And this is when a man is seased of a maner wythin whyche, it hathe bene vsed tyme out of mynde, that the tenauntes wythin the bondes and presyncte of the sayde maner, haue holden landes aad tenementes to the and to their heyres in fee symple, fee tayle, or for terme of lyfe, at the wyll of the lorde according to the custome of the maner. And such a tenaunt,

tenaunt, can not aliene or sell his lande by hys dede, for yf he do, the lande or tenemente that is so alyened and solde, is forfaite into the lordes handes but yf he wyll aliene hys coppe holde, lande to an other, he must accordyng to the custome, come into the lordes court, and there surrendre it into the lordes hande, to the behouse and vse of him that shall haue the estate. The forme of whiche surrendre is cõmenly vsed to be: thys.

Surrendre

¶ Ad hanc curiam venit A. de B. et surrsum reddidit in eadem curia vnum mesuagiũ. ꝛc. in manus domini ad vsum. C. de D. & heredũ suorũ vel heredũ de corpore. ꝛc. Et super hoc venit predictus C. de D. et cepit de dño in eadem curia mesuagium predictum, habendũ et tenendum sibi. ꝛc. ad voluntatem dñi secundum consuetudinem manerii, faciendo inde redditus, seruitia, et consetudines inde prius debitas et cõsuetas. ꝛc. Et dat domino pro fine. ꝛc. Et fecit domino fideletatem.

The forme of surrender.

¶ These as I said be called tenauntes by coppe of court rolle, bycause they haue none other euidence to shewe concernyng theyr lãdes saue only the copies of the rolles of their lordes court.

¶ Neyther can these tenauntes sue or be sued for suche landes, in the kynges courte, by writ, or otherwise, but yf they wyl in anye wyse implede or sue others for suche coppe landes, they must do it by way of plaint in the lordes court after this sorte.

¶ A. de B. queritur versus C. de D. de placito terre videlicet de vno mesuagio. xl. acris terre. iiii. acris prati. ꝛc. cum pertinentis, et facit protestationem sequi querulam istã in natura

The forme of the playnte.

breuis dñi regis assise mortis antecessoris ad to
munē legē vel rc. plegii de plequēdo. F. G. rc.
¶ Nowe although sume suche tenauntes haue
an inherytaunce accordinge to the custome of ye
maner, yet in very dede they are but tenauntes
at the wil of the lorde. For as some mē thinke
yt the lord wyl expel them, and put them forthe
they haue no remedye at all, but to sue vnto
theyr lorde by waye of petytyon, desyrynge hym
to be good and gracious lorde vnto them. For
yf they myght haue anye remedye by thy lawe,
then should they not be called (say they) tenaun
tes at the wyll of the lorde after the custome of
the maner. But other men of no lesse learnyng
and prudence haue bene of contrarye sentence
as lorde Brian chiefe iustice, in the time of kig
Edwarde the. iiii. whose opinion was alwaies
that if suche tenaunte by the custome (payinge
his seruices) be elected and put forthe by hys
lorde without cause reasonable, he maye verye
well bring and maintaine an actiō of Trespas
against his lorde at the common law: as appea-
reth termino Hillarii an. xxi. E. iiii. also lorde
Danby chiefe Justyce in lykewyse, was of the
same iudgemēt: as appeareth termino Mi. An.
vii. E. iiii. where he sayeth, that the tenaunt by
the custome is as well inheritable to haue hys
land after the custome as is he that hath a free
hold at the common law, but the determination
of thys questyon I remytte to my great may-
sters, which cā solue the knottes and enigmates
of the lawe.

Action of Trespas.

¶ Forasmuche as yet styll of this matter, Causa
iudici certant et adhuc sub iudice lis est.

¶ Also ye shall vnderstande, that the vsage of
some

some manours is, when the tenaunt wil surren der his lande to the vse of another that he shall take a wande or a rod in his hand, and deliuer it to the stewarde of the courte, and ye stewarde shall delyuer the same wāde in name of seisin to him that shall take the lande and suche a tenaunt is called tenaunt by the verge. Diuers other customes there be of surrendryng of copy holde landes, whiche here for tedyousnesse I wyll omytte. And for asmuch as tenauntes by custome of the Manour. haue by the course of the common lawe no freholde: therfore they be called tenauntes of base tenure. Base tenure.

¶ Also if such a tenaunt letteth to ferme his copye holde land for lenger tyme the a twelfe moneth and a daye wythout the lordes licence it is a forfaiture of his lande to the lorde.

¶ And know ye that yf this tenaunt felt anye tymber, that growetb vpon the lande but onelye for the reparation of the same, thys is wast and a forfaitoure of his copy hold.

¶ Hytherto haue I treated of the fyrste member of our deuision, that is to wytte, of chatels for as I sayd, all leases for terme of yeres, and at wyll be accompted in the lawe but as chatelles, and be cōprised vnder that name saue that they be called cattelles realles, where as kyne, oxen, horses, money, plate, corne, and suche lyke be called chatell personalles. Chattelle real and personel.

Nowe we wyll procede to the explanicion of the seconde membre, that is to saye, of free holdes.

A diuision of free holdes.

FRee holdes or franke tenementes a man maye haue in sundrye wises, for eyther he is seysed for terme of his owne life or for terme of another mãs life. If he be seised for terme of his owne lyfe, eyther he hath gotten suche estate by way of purchase, or elles the lawe hath intyteled hym therunto. I call it by purchase, whether he commeth vnto it by hys owne bargayning and procurement, or by the gift of his frende, and I call it by the operatiõ and intitelyng of the lawe, when a manne maryeth a woman that is an inheriters, and hathe issue by her, and shee dyeth, nowe shall he haue the landes duringe his lyfe, by the course of the lawe, and shalbe called tenant by the curtesy of Englande.

Tenaunt by the curtesie.

¶ In likewise, yf a man be seased in fee symple, or fee tayle of landes, and taketh a wife, & he dieth the law geueth vnto the wyfe ẏ thyrde parte of her husbãdes landes, for terme of life, and she shalbe called tenant in dower.

Tenaunt in dower.

¶ Tenaunt for terme of lyfe.

TEnaunt for terme of lyfe, is he that holdeth landes or tenementes for terme of his own life, or for terme of anothers lyfe. Howbeit ẏ most frequent, & cõmon maner of speakiṅg, is to cal him that hath estate for terme of his owne lyfe, tenaunt for life, and him that hath estate for terme of another lyfe, tenaunt pour terme dauter vie, that is to saye, tenaunt for terme of anothers lyfe.

¶ ye shall note, that lyke as hee that maketh the lease is called the lessour, and he to whome

the

the lease is made, is called the lessee, so he that maketh a feoffemēt is called the feoffour, & he to whome the feoffement is made the feoffee.

¶ Also if tenaunt for terme of life, or tenaunt for terme of an other mans lyfe do waste, the lessour or he i the reuersiō shal maintaine very wel an action of Waste agaynst him and shall by the same recouer treble damages. Waste.

¶ Fynally ye shal vnderstande that by an acte of Parlyament made in the.xxvii.yeare of our souerayne lord that now is, kyng Henrye the eyghte, it is enacted that no freholde, nor estate of inheritance shal passe nor take effecte by reason of any bargayne and sale, except that same be made by wrytinge indented, sealed and enrolled, in one of the kynges maiestyes courtes at westm̄, or els within the same county where the lande doth lye, before the custos Rotulorū, and.ii. Justyces of peace and the clerke of the peace of the same countye, or two of them at leaste, of whych the sayde clerke shalbe one, and that such inrollement be made within sixe monethes after the date of suche wrytynge. And for the inrollement of euerye suche wrytinge, where the lande comprysed therin is not aboue the yerely value of fortye shylynges, they shall take two shylynges, that is, twelue pence to the Justyces, and.xii.d. to the clerke. And if the lande be aboue the yerely value of.xl.s. the they shall take.v.s. that is.ii.s. and vi.d. to the Justyces and.ii.s. and vi.d. to the clerke, whiche shall inrolle and ingrosse sufficiently in parchement suche dedes and wrytinges, and at euery yeres ende he shall delyuer the same to the Custos rotulorum of the same county, to remaine In.xxvii H.viii.

in his custodye amōg other recordes of ye same countye, so that the partyes resortinge thyther may see them. Prouided, that this extende not to any tenemētes or hereditamentes lying wīn any citye or towne corporate wherī ye Maires, Recordes, or other officers haue authority, or haue lawfully vsed to enrolle any euidences or wrytynges within their precinte.

Tenaunt by the curtesye.

TEnaunte by the curtesye of Englāde is he that hath maryed a wife inherited, & hath had issue by her, & she is deade, in this case the law of Englād permitteth and suffereth the husbād of such wife to receiue and kepe styl all his wyues lande that she had eyther in fee simple, or fee tayle, so longe as he lyueth. And this is by the curtesye, & vrbanitye of Englande, for this thing is vsed in none other countrey nor regyon.

¶ But in this case it is required that ye chylde be vytal, that is to saye, be borne and brought forth into this worlde alyue, & therfore the commō saying is, and hath byn, that onles ye childe be herde crye, the father shal not be tenaunt by the curtesye, for the onely proue and argument of lyfe in an infāt borne is the vagite & crying.

¶ Ye shal furthermore vnderstand, that onlesse the husband bee in actual and reall possessyon of his wyues lādes, and seysed of them in her ryghte, he shal not bee tenaunte by the curtesye after her death. And therfore if landes discend to a mannes wyfe, so that she is tenaunt in the lawe, and to euery mans action, yet if the husbande haue not made an actual entre durynge

couerture and matrimony betwene the, he shal not be tenaunt by curtesye, for it shal be reputed and iudged his foly and neclygēce that hee woulde not enter in her lyke tyme.

¶ Otherwise it is of aduousōs, rentes, comōs and such other thinges, whiche forthwith when they descende, be in a mā or woman without anye entre or further ceremony of lawe.

¶ Note that if tenaunt by the curtesye of England wyl suffer or make any waste in ye landes or tenemētes that he so holdeth, he is punishable therfore, by action of wast brought by him in the reuersion. Weast.

¶ Also it is to be knowen, that of thinges that bene in suspence, a man shal not be tenaūt by ye curtesye, and therfore if a man be tenaūt in fee sympie of certeyne land, and doeth entermarye with a woman that is the seignoresse or ladye of the same and hathe issue by her, & she dieth, yet shal he not be tenaunt by the curtesye of the lordeshype or seignorye, bycause him selfe is tenaunt of the land, and therfore the lordeshyppe is suspended for the tyme, for a mā can not bee bothe lord and tenaunt of one thinge, but if he had not bene tenaūt of the land he should haue had the lordshyp after the death of his wyfe by the curtesy of England very wel.

¶ Also note that of a ryght onelye a man shall not be tenaunt by the curtesye, as yf a woman sole seased in fee of land or tenementes, be diseysed and after take a husband, and they haue issue, and she dye before any reentre made, the husbande shal not be tenaunt by the curtesye. Note.

¶ Note further that of a reuersion, a mā shall not be tenaunt by the curtesye, as yf a woman Note.

sole seysed of lāde in fee, make á lease to S. for terme of lyfe, after taketh a husband and they haue issue, and she dye, liuing ẏ lease for terme of lyfe, the husband shal not be tenaunt by the curtesye.

¶ Of tenaunt in dower.

TEnaunt in dower, is she that hath bene maried to an husband that was during the matrimony, betwene them seased of landes or tenemētes i fee simple, or fee tayle wlyche is now dead, and she seased of the thirde parte of her husbandes sayd landes for terme of her life. For by the commō law of the land if the husband be at any time duringe the couerture seased lawfully whether it be by purchase or by discent, eyther in fee, or in taile, and dye, his wyfe ought to be endowed by ẏ course of the common lawe of the thirde fote. And in some places by an auncient custome she shal be endowed of the moytie, yea and though the husbande were neuer seased actually during ẏ couerture, yet yf the lādes be cast vpō him by the lawe, so that the law calleth him tenaunt to euerye mānes actiō, it suffyceth the womā to demaund her dower, for it were vnreasonable ẏ the negligence & slackenesse of entrynge of the husbande, should hurte the wyues tytle.

dower at the common lawe

dower by custome.

Tenaunt by the curtesye.

¶ Otherwise it is, as is sayd before, of tenaūt by the curtesye, for if landes descended to a woman couert and the husbande for slothfulnesse or neglegence doeth not entre in his wyues life he shal not be tenaunt by the curtesye, for by al lawes the wife oweth obedience and subiection

to

to her husbande and therfore she can not cōpel him to entre, but when landes descended to ý wyfe, the husbande onely hath power to entre at his pleasure.

¶ And ye shal understand, that onlesse ý wife be passed the age of nine yeres at ý time of her husbandes death, she shall not be endowed by the common lawe,

☞ But it is to be knowē that a womā may by diuerse wayes estoppe & preiudice her selfe of her dower, as if she committe any crime, for which he is attainted of treason, murder, or felony, she get in this case no dower, notwithstādyng she hath obteyned her pardon.

A womā shal haue no dower

¶ Also if after the death of her husbande she taketh lease for terme of lyfe, of the same lādes whereof she is indowable, she loseth her dower of the same. Moreouer if she departeth frō her husband and liueth in aduoutrie with another man, and is not reconcyled agayne to her husbād without correctiō of ý ecclesiastical power she loseth her dower after her husbādes death. She shalbe also barred of her dower if she wil withholde from the heire, the charters, and euidence, concerning that lande wherof she aketh dower. But none other, saue the heire, ca withholde her dower for this cause.

¶ It oughte not to be vnknowen also of what thinges she may demaund dower, and of what thinges not. Of landes, messuages, aduoysons rent charge, rēt seruices, or seignories in grosse or otherwise, of vyllaynes, of commons certayne, of estouers certayne, of mylles, and offices, or of the profite of them, she is dowable. But of cōmons, & estouers sans nombre al-

No dower.

to of annuities, of homages, of thinges of plea sure as of seruyce of payment of roses and sem blable, the shal nat be endowed.

¶ There be yet two other kyndes of dower the one is called dowment ex assensu patris, that is to saye, by the assent of the father, and the other is called dowment de la pl⁹beale partie. That is to saye the fayrest parte.

Dowement ex assensu patris.

¶ Dowmente ex assensu patris, is whan the father is seased of landes in fee sympie, & his sonne whyche is heyre apparant, endoweth his wyfe at the churche doze, when he is espoused of parcell of hys fathers landes with the assent of hys father in wrytynge testyfyeng the same assente, yf in thys case her husband dye she may forth with entree into the land so assygned vnto her wythoute further appoyntyng of proces of lawe, althoughe the father of her sayde husbande be yet alyue and in actual possessyon of the lande. But yf she thus do, and take her to this endowment at the churche doze: she cā not haue her dower also by the common law of the thyrde parte of all her husbandes lādes or any parcel of them, howbeit yf she wyll refuse thys assignemente made vnto her at the church doze and demaunde dower at the common lawe, she may so do verye wel.

Dowement ad hostium ecclesie.

¶ A man maye also endowe hys wife at the tyme of the spousayles, of his owne lādes, the whych he hath in hys owne possession, and that dower is called dower, ad hostium ecclesie, that is to saye, at the churche doze.

Dowemēt de la pl⁹beale.

¶ Dowement De la plus beale, that is to saye dowement of the fayrest parte shalbe in thys case whan a mā is seased of lādes, whych he holdeth

of

of an other man by knightes seruyce, and of o-
ther lādes which be of socage tenure, and hathe
issue, which is within the age of. xiiii. yeres and
die, and ye Lorde of whom the lande is holden
by knyghtes seruice entreth into the lād holden
of him and the mother of the childe entreth in-
to the socage tenure as gardayne in socage, yet
in this case the woman will bringe a writte of
dower agaynst the lord which is a gardeine in
cheualrie, he may plede the speciall matter, and
shewe howe she as gardeine in socage hathe so
muche lande and therupon pray the court that
she may be suffred to ēdow her self of so much
land, being in her owne custodye, as amoūteth
to the third part of the whole landes.
¶ And then the iudgement shall be, that ye gar-
deyne in chiualrye shall retayne the land holdē
of him quite from the woman duryng the nō-
age of the warde. After which iudgement and
sentence gyuen, she maye go, and in presence of
her neighbours, and endow her selfe of ye beste
part of that which is in her custodye, amoun-
ting to the thyrde parte of the hole, and then is
she called tenant in dower de la plus beale.
Finally ye shall vnderstande, that by a sta- An. 27. H
tute made in the. 27. yeare of our moste dreade 8. ca. 1.
souerayne Lorde kynge Henry the eyghte it is
enacted that where dyuers personnes haue esta
tes made to them and to theyr wyues, and to
the heyres of the husbande, or to the husbande
and wyfe, the heires of their two bodyes be-
gotten, or the heires of one of theyr bodyes or
for terme of both or one of theyr lyues, or any
other persons and theyr heyres, to the vse of
the husbandes and wife, or to ye wife alone, for

her ioynture: in euery such case the woman shal not be suffered to demaund any dowrye of her resydue of her husbandes landes to whome she hath her ioynter against any tenaunt of the lād. But in case she hath no such ioynter: then may shee demaund her dowrye after ye course of the common lawe. Prouided neuertheles ye if such womē be lawfully expulsed from their ioynter or any parte thereof without fraude or couyn: then shal they be endowed of ye resydue of their husbandes lādes for asmuch as the landes shal amounte vnto, out of which they were so expulsed and put forthe.

¶ Prouyded also, that yf landes or tenementes bee assured to any womā after mariage for terme of lyfe or otherwyse in ioynture (excepte it bee by acte of parlyament) and the wyfe ouerlyue her husbande in whose time the ioyneture was made: in thy case the wife may refuse ye lādes so appoynted vnto her in ioynture, & haue her dower at the commō lawe, of such lādes as her husband was seased of, at any time during the couerture.

¶ Also yf the husbād commytteth treasō murder or felonye, for which he is attainted ye wyfe shall not haue her dower.

¶ And note that yf the husband entre into religion, and is professed, the heire shall enter into the lād, but the wife getteth no dower til ye husbande dyeth. M.32.E.2.

¶ And lykewyse yf a mā seased of land taketh a wyfe that is Alyen borne and dieth, shee shall not be endowed, excepte she be made Denizi by acte of parliamēt E.3.H.6. And note that whē the wife bringeth a wryt of dower, and recouer

her

her ryght she shall recouer no damages, but where her husbande dyed seased of the landes recouered. Damages.

¶ A deuisyon of inheritaunce.

HEtherto haue I spoken of freeholdes, nowe it remayneth to treate of inheryttaunces, not the inheritaũces, be no freeholdes, for they bee freeholdes also, but of the other estates of whiche I haue heretofore treated be onely freholdes, and of no hygher nature where as a state of inheritaunce, although it be a freholde in dede, yet it is not to bee called by name, syth it is after more excellent and greater estate. But ye shall vnderstand, that of inheryttaunces some be of more amplitude and excellency thē other some be as that inheritaũce whyche is pure symple, and without limytatiõ of what heyres, whyche kynde of inheritaũce is called fee symple. But when I make a limitation of what heyres, then is it called fee tayle, of whiche also be two sortes, as hereafter more at large shalbe declared. Nowe therfore the nature of fee symple is set forth with our accustomed compendiousnes. Fee symple.

¶ Of fee symple.

FEe symple is (as I sayd) the most ample and large inheritaunce that can be in this realme deuised or recogitare, as the which a man hath to hym and his heires simple without any further limitatiõ, for whether they be of his owne body begottē or not, so that they bee the nexte of his kynne, and within the degrees it suffiseth.

¶ So then, tenaunt in fee symple is he ỳ hath

lādes or tenemētes (whether it be by purchase or by discente) to him and to his heires assygnes for euer. For if a man wil purchase lādes in fee simple, he must nedes haue these wordes (hys heyres) in his purchase, for these be the onlye wordes that make the estate of enheritance. Therfore if landes be gyuen to a mā for euer and no mention be made of his heires, he hath an estate but for terme of his lyfe because these wordes (his heires do lacke.

Deuyse. yet neuertheles, yf a man by his testament doeth deuise landes to another in such place or case where the custome or lawe wyl serue, so to do, though he maketh no mētion of heyres, but sayeth that he bequeth to suche a person suche landes to haue and to holde to hym and to hys assygnes for euer more here a state of inheryptaunce doth passe, for in testamentes the wyll & intent of ꝑ testatour is to be pondered, & not ꝑ formal and prescripte wordes of the lawe.

¶ Also these termes in the law, franckemariage, and franke almayne that is to say fre mariage and free almaine do include in thē wordes of inheritaunce.

¶ And therfore if I geue landes to a mā with my doughter in franke mariage without further addition or mention of heyres, this is an estate of inheritaunce, as he shall hereafter declare more plentiously. In likewise it is of landes geuen to an house ecclesiastical in pure and franke almes. Moreouer if landes be geuē to a man and to his blod, or vnto him and to his sede, he hath in both cases a state of inheritaūce for in the lesse he habe a fee taile, and in ꝑ other a fee simple. For this worde sede, and bloude

Donū se mini & cāguini suo quid sit.

and

and such like do implie wordes of inheritaũce.
¶ Also if landes be gyuen to a man and to his heires males, or females, he hathe by this gyfte a fee simple, bicause it is not expressed of what body the issue shal come. E.9.H.6.
¶ But nowe it is to bee sene whoe be sayde, a mans heires in the lawe, ye shal therfore know that my brother or syster by the halfe bloude, that is to wytte, by the fathers side, and not by the mothers, or contrarywyse by the mothers, and not by ẏ fathers, shall neuer be mine heire nor none that come of them.

The halfe bloude.

¶ Neyther my bastarde can be mine heire, nor myne owne naturall father nor mother nor graundfather, nor graundmother: can be mine heyre. For it is a principle and groũd of ẏ law that inheritaunce may lynyallye dyscende, but ascende it may not. And therfore if I haue landes in fee symple and dye without yssue of my bodye, my father can not bee myne heyre, but my fathers brother or syster shall, and then yf my vncle or aunte dye sealed without issue, my father shal haue ẏ lãdes as heire to mine vncle and not as heyre to me, for that can not be.

A bastard shalbe no heyre, a groũd of the lawe.

¶ But it may go frõ me to mine vncle or aunt wel ynoughe, for that is not called a lyniall ascention but a collaterall discente.
¶ Also ye shal vnderstãd that the lynial discẽt is when the dyscent is cõueyed in the same line of the hole bloud, as graundfather, father, and sonne, and so downe. And collateral discent is out of another braunch, from aboue of the hole bloud, as the graundfathers brother or fathers brother and so dyscendynge.

Linial & collateral discent.

¶ And ye shall note, that by the common lawe

realme the eldest son shal haue the hole inheryt-
aunce, and after him if he haue no issue the se-
conde sonne, and so forth. And if he haue no sō
nes but daughters, thē shal al the doughters to
gether enherit, which be called coperceners, but
if I haue no issue at al, neither sōnes ne dough
ters thē shal my eldest brother iheritage succede
me, but & if I haue no brother, thē my sisters
yf I haue any, yf not my vncle by my fathers
side, if the landes be mine owne purchase. And
to be shorte, if there be none in lyke, of my fa-
thers syde, it shal go to my mothers side, & yf
ther cā be found no heire neither by my fathers
side, nor yet by my mothers, thē shal it reuert &
eschete, as they cal it, to the lorde of whome it
was holden, for euery lād must nedes be holdē
if landes descend vnto me by my mothers side
of some lorde as shalbe hereafter shewed. But
then if I fayle of issue, the landes shal descēde
onely to my heyre of my mothers syde & neuer
to myne heyres of my fathers side, as on the cō
trary side, if I haue landes or any hereditamē
tes by descent frō my fathers or his bloud, they
shall neuer discende to my heyres by my mo-
thers syde.

Coparceners.

Eschete.

¶ And thus ye se a great dyfferēce in this be-
halfe, betwene purchased landes, and landes
whyche descende from mine auncestoure.

Diuersite.

¶ If there be three sonnes, and the middle son
purchase landes and dye without issue ye eldest
shal haue landes and not the yongest.

¶ Also it is a principle in our lawe, that none
can be myne heyre of landes that I hold in fee
simple, onlesse he be mine heire by ye hole blud
that is to say, both by father and mother for if
a man

A groūd of ye law.

observe to read the 18th line as it is marked above, before the 17th. Afterward read thus, But if Lands, etc.

a man hath issue two or thre sonnes, by sundry wyues, and the eldest purchaseth landes in fee and dieth without issue, his halfe brethren I meane those that be not his brethrē both by the fathers syde, and mothers side, shall not haue the lande but it shal go to his vncle.

¶ Likewyse if a man hath by his fyrste wyfe a sonne and a doughter, and by his secōde wife another sonne, and the sonne by the fyrste wife purchaseth landes in fee symple and dieth without issue: the sister germyn, that is to say, both by fathers side & mothers, shal haue the landes by discent as heyre to her brother, and not the yonger brother, forasmuch as the yōger brother cā not in this case be heire to his elder brother bycause he is no brother germayne vnto hym. Other wyse it is of landes or other hereditamēntes entayled as shalbe hereafter specified.

¶ Also if a man be seised of landes in fee symple and hath issue, a sonne & a doughter by one wife, and after the death of his first wife a son by another wyfe, & dyeth, and the eldest sonne entreth into the lādes, and after he dyeth without lawful issue of his body, the doughter shal haue the landes and not the yongest sonne, and yet the yongest sonne is heyre to his father, but he is not so vnto his brother. But if i this case the eldest son had not entred after the death of his father, but had died before any entre made by him, then shal not the sister germayne enter but the yonger brother is heyre to his father bi cause the eldest brother was neuer in actuall possession, which is requisite to the person that claimeth to be heyre collaterally.

But to the lynial heyres, it suffereth that the

auncestour should haue bene heire if he had lyued, I meane as thus. A man seased of landes and hathe issue a sonne and a doughter by one wyfe, and afterwarde a sonne by another, hee dyeth, and after his death the eldest sonne entereth not but dyeth without issue before he can make actuall entre, here in this case his syster shal not haue the landes as heyre to her brother bycause her brother was not actuall possessed but the yonger brother shal haue thē as heire to his father, yet yf theldest sonne in that case had lefte behynde him issue of his bodye, whether it had bene sōne or doughter, thy issue notwithstādīng, that the father of ye issue was neuer possessed eyther actually, or in the law, shal haue lādes & shal conuey his discent frō hy father, the cause hereof is thy, that the sōne or doughter is lyniall heire where as the brother, syster, vncle, aunte. &c. be heires collateral, and so ye shal obserue a diuersitie.

Dyuersyte.

I cal an actual possession, when a man entreth in deede into landes, whiche be to him discended, but a possession in law be called whē lādes be discended to a person, & he hathe not yet really, and actually entred into theym. For not withstanding that he is i actual possessiō yet he is possessed in the law, that is to say, i the eye & consideratiō of ye law he is deemed to be possessed, forasmuch as he is tenaūt to euery mās actiō that wil sue for the said lādes or els assuredly there shuld insue an intollerable īcōuenience as we shal more copiously opē i another place.

Hereditas quid sit.

¶ yee shal furthermore vnderstande that this word (inheritāce) is not only to be accōmodate and applyed to that whych commeth by discent

or suc-

or succession frō a mās aūcestours or predecessours, but also to euery purchase in fee simple, or fee tayle.

¶ And note that a man can haue no larger or greater estate then fee symple.

Of fee tayle.

YE shall understād that before a certain Statute called the statute of Westm. seconde, there was no state taile but all was fee simple, eyther pureye, ꝑ is to say, wout cōdition or at the lest way condyyponally as appeareth by the pretence of the sayde statute, but nowe sethens the premulçating of the statute, diuers formes of statute tayle haue ryseu.

Westm. 2. Cap. 3.

Diuision

¶ Fee tayle is when it is prescribed and limitted in the gift, what sort of heires and by whō engendred shall enherite.

¶ As for example, I geue landes to a man & to his heires, and go no further, this is fee simple; but if I make a limitacion, and adde of his body begotte, now is it fee tayle, that is to say a fee or inheryttaunce lymitted, prescribed, determinate, or assygned.

¶ So that yf I geue landes to a man and to hys heyres, he hath fee symple, but yf I gyue lādes to him and to his heires of his body lawfully begotte, he hath but a fee tayle, forasmuch as I appointe, limitte, prescribe, and expresse what heires they shalbe, and for lacke of suche heyres, the gyft shalbe expyred and worne out, and the landes shalbe reuerted againe to the gyuer or his heyres.

☞ But ye must obserue and note that there be two kindes of fee tayle. There is a generall

ayl e and there is spectall taile.

Fee tayle generall is as where landes be geuen to a man and to his heyres of his body begotten without any mencioning and expressing by what woman they are begotten.

Generall tayle.

And therfore if a man be tenaūt in the general taile of landes, and taketh a wife & hath issue by her, and she dieth, & afterward he taketh another wife, of whome he hath also other issue here eyther of these issues is inheritable to this lande intayled. But yf I expresse in the gyfte by what womā the heires shalbe procreate and ingendred, then is it an especial tayle, as for example to make the thinge plaine, if landes bee geuen to a man and to the heyres of his bodye lawfullye begotten by Margarete hys wyfe, this is an especiall taile, for the issue of him begotten by another woman, shall neuer inherite by force and vertue of the taile. Likewise it is, if landes be geuen to a woman and to ẏ heires of her bodye lawfully begotten (and shewe not by what man) this is a generall taile, but yf I go forthe and saye by suche man her husbande, then it is an especiall taile.

Especiall tayle.

Also if I gyue landes to a man and to his wife, and to the heires of their two bodies lawfully begotten: this is an especiall tayle, as wel in the husbande an in the wyfe.

Semblable it is, if a man giueth landes to another man with his doughter, or kinswomā in franke maryage, this worde (franke mariage) implieth a state tayle especially, and ī this case as wel the mā as the woman hath estate in the speciall tayle.

Franke maryage.

But yf I geue landes to a man and to such

a woman

a woman, and to his heyres that he hath begot of her, here the womã hath estate but for terme of her lyfe, and the husbande an estate in the especiall tayle. And lyhewyse it is in the womans behalfe, as yf I geue landes to a mã and to his wyfe, and to her heyres of her bodye of her sayde husband engendred, he hath an estate but for terme of lyfe, & she an estate in the speciall tayle. But in bothe cases, yf I had sayde to the heyres & not to his or her heires, thẽ shuld eyther of them haue had an estate in the speciall tayle, bycause this worde heyres is aswel referred to the one as to the other.

Dissente by heyres males.

Ye shall also vnderstand, that yf landes bee geuẽ to a man, and the heyres males of his bodye, this is estate tayle, and ĩ this case the heire female shall neuer inherite.

Also yf a man hath issue and dyeth, and landes be geuẽ to him and to his heires of hꝭ body begottẽ, this is a good estate taile, although the father were dead at the tyme of the gyfte.

Fynally it is to be noted, that of lãdes which a manne hath in fee symple the possession of the brother shall cause the syster germayne that is to saye, the syster bothe by the fathers syde and mothers, to inheryte, and ĩ this case the brother by the halfe bloud shall not inheryte, as heretofore was sayde, but of landes which be intailed otherwyse it is. Therfore yf a mã be seased of landes in the generall tayle, and hathe yssue by his fyrste wyfe a sonne and a doughter, & also a sonne afterwarde by another wyfe and dieth and the eldest sonne entreth into the landes and after dyeth, the syster germayne to the eldest sõne shall not haue the lãdes but the yõger

brother

brother of the halfe bloud bycause, whosoeuer shal inherite landes or any other hereditamentes in tayle, must clayme them as next and immediatly heyre, not to him that dieth last seased of the landes but to him whom the landes wer fyrst geuen vnto, which in the case before remembred, is the sonne and not the doughter.

Diuersytie

Thus ye shall marke a greate diuersitie betwene the forme of successyon in the landes of fee sympte, and the forme in fee tayle.

Tenaunt after possibilitie of yssue extynete.

Whē lādes, tenemētes or other hereditamētes begeuē to a mā & to his wife, & to the heyres of their .ii. bodies lawfullye begottē, if ī the case either of thē chaūce to die before they haue issue betwene thē, he or she ý ouerliueth, is stil tenāt in taile, but wout al possibilitie of any issue ý cā be heyre to these lādes or hereditamētes thē intayled, & for thys cause he or she thus ouerliuing is called tenāte after possibilitie of issue extinct, for in suche a tenāt is al possibilitie of issue ý mai be inheritable to these lādes by force of the gift in taile vtterly extinct & quēched, & by his or her death ý state tayle shal expire, cease, & be abolisshed for euer, and shall reuerte and turne againe to the geuer or donour from whence it came.

Disparnisshable of wast.

¶ Yet for asmuche as this tenaunt after possybilitie of issue, had ones an inheritaūce in him he shall not be punisshed by an action of waste

thoughe

thoughe he maketh neuer so much waste in the landes and tenemētes where as yet in effect he is but a tenaunt for terme of lyke.

But yf this tenaunte doth alyenate, in fee such landes, he in the reuertion maye entre for the forfayture. Forfeyture.

And this for estates at this presēt time shal suffyce. But to the intent that ye may the more easlye comprehende all the membres of the diuisyon of the possessyons & estates which mē may haue in landes tenementes and other heriditamentes, it shal not bee euyl done to set forth as it were in a table before your eyen the deuision therof whiche is this.

		Fee simple.	
	State of inheryptaunce.		Generall.
			Speciall.
		Fee tayle.	After pos.
After the common law.		Curtesye of Englande	
		Dower.	
	Franke tenēt onely.	Terme of lyke.	
Franke tenement.		Terme of others life	
Possessyon of	After the custome	Which is deuided in lyke maner as franke tenemēt by the common lawe.	
		Terme of yeares.	
	Reall.	Warde of landes.	
Chatel.		Ait wyl.	
	Personal.	All good mouables.	

Hetherunto

HEtherunto I haue made a cōpēdious and shorte declaracion of estates of all sortes. But where I sayde, that among systers there is no prerogatiue or preeminēces cōcerninge the inheritinge of their auncestours landes but that they shalbe altogether inheritours & make as it were but one heyre, it is expedient to make a further declaracion & processe in this behalfe, and to shewe how and in what maner this particion shalbe made.

Deuisō perceners at the common law perceners by custome.

¶ But ye shall vnderstand, that there be, besides parceners at the common lawe whiche bee onely sisters, also parceners by custome which is amonges brothers contrary to the course of the common lawe, and this custome is in some places of Kent, and in other places wher lādes and tenemētes be of the tenour of Gauelkind. ¶ yee shall therfore knowe that when a manne is seased of lande in fee simple or in fee tayle, & hathe no issue but doughters, and dye, and the doughters do entre into the landes, th' descended vnto them, now they be called parceners, or coheyres, and by a writ called: De partitione facienda, broughte by one of them againste the others, they shalbe constreyned by the lawe to suffer an egall particion to be made of the landes betwene them.

Wryt de perticione faciēda.

Particion in diuers maners.

¶ Now particion may be made in sundrye wayes. One waye is when they thē selues do make partition betwene thē of the hole heryytage and do agree vnto the same, and do entre euery one into her part so allotted vnto her.

☞ Another waye is when by all theyr agrement & consent one common frēde doth make the partitiō. In which case the eldest sister shall

haue

haue the syrste electiō, and after her the second syster, and so forthe. But yf they agree ý the el- 3
dest syster shal make the particion, and she maketh it, then the eldest shall not chose syrste, but shal suffer all her systers to chose before her, as it is thoughte.

There is also another forme of partition 4
whyche is egallye to deuyde the landes into so many partes as there be coheyres or parceners, and to write euery parte so deuyded in a seueral scrouile of paper, and so put the sayd scroulles in a bonet, or to enclose them seueralye in balles of waxe, and then the eldest syster to chose whyche balle she wyll, or to put her hande into the bonet, and to make a scrouile, and to holde her to her chaunce and alloument, and so consequently euery sister after other.

And ye shal note, that partition by agremēt Note.
may as wel be made by nude and bare wordes wythout writynge as by writyng.

¶ And yf anye of the parceners wyll not suffer A writte
any particiō to be made, thē may the other than De parti
would haue particiō purchase a writ called de cione
particione faciēda, against them that refuse par facienda.
tition to compel ý same to suffre particiō to be made accordynglye, and than by the iudgement of the court, the shyriffe by the serement of twelue men shal make particiō betwene the and shall assygne to ethe syster her portion, as he shall thynke good, wythout gyuynge anye election or chose to the eldest.

¶ And yf two Manours or meeses happen to discende to two systers, & the maners be not of egal value, then may she, to whom the lesse maner or meese is allotted, haue assygned vnto her

a rente proportionably out of the other maner for the whiche rent she and her heyres maye distrayne of common rygh̃t, though they haue no wrytynge therof.

Distresse of common rights.

¶ Fynally, ye shall vnderstande, that yf a man be seased of lãdes in fee symple, and hath issue two doughters, and gyueth with one of hys doughters to another man that shal mary her, the thyrde or fourth parte of his land in frãke marryage and dieth, yf in this case the doughter that is in this wise bestowed and auãced, wyl haue her portion of her fathers herytage, shee must put her lande geuẽ vnto her in frãke maryage in Hochepot newe agayne, I meane she must be contented to suffer her sayd lãdes to be commyxte and mingled with the other lãdes of which her father died seased in fee sipl̃e, so that an equal diuysyon may be made of the hole, or elles shee shal haue no parte of those lãdes of whyche her father dyed seased. But yf her father had made vnto her but a common gyft in tayle, or feoffemẽt in fee, she should not nede to put her landes in Hochepot, but may very well kepe and retayne them styl, & also haue as good parte of the rest of ỳ lãdes of whiche her father dyed seased, as her other syster or systers haue.

Hochepot

Franke marryage.

For a gyfte in franke maryage, is accõpted, the most free and most lyberal gyft that cã be, and that gyfte whyche the lawe iudgeth to bee onely for the auauncement and bestowynge of the doughter, where as feoffemẽtes in fee simple, & also cõmon gyftes in tayle be accustomably for other causes, and for the auauntage rather of the giuour, or feoffour then of the taker.

¶ Also yf parceners make partition of landes

beynge

beyng within age that partition is voyde.
¶ And yf parceners in fee simple make partitiõ and the parte of the one is better then the other beynge of ful age of. xxi. yeares, then the partycyon is good and can not bee defeated, but yf it bee of landes in fee tayle, the one parte beynge better then the other, that partition maye be defeated by theyr heyres.

¶ Of Joynetenauntes.

HItherunto verely haue wee spoken of Coheires called Parceners of the cõmon law, which as is heretofore declared do cõe to lãdes & other hereditamẽtes ioyntely by the course, operation and acte of the lawe. Nowe shall wee speake somewhat of them which eyther ioyntly or seuerally come to landes, tenementes, or other hereditamentes by theyr owne purchase, acte, procurement and workynge. And of these they that come to them by ioynte tytle, way, or coloure be called ioyntenauntes, but they that come by seuerall tytles, wayes, or colours to landes or tenementes, bee named tenauntes in common.
¶ So then, yf a man beynge seased of lãdes or tenementes or other hereditamentes shall thereof enfeoffe two, three, foure, or more, to haue & to holde theym in fee symple, fee tayle, or for terme of theyr lyues, or for terme of anothers lyfe, these personnes so enfeoffed and seased, be called Joyntenauntes. Also yf two or moo do expell and dysseyse another man of anye landes or tenementes to theyr owne behoue and vse these disseysours and wronge doers are nowe

Tenauntes in cõmon.

become ioyntenauntes, bycause by theie owne acte they come ioyntlye to thys lande. But yf they do dysseale another man to vse onelye of one of them, in this case they be not ioyntenaũtes but he to whose vse the desseysin is made tenaunt alone of the same, and the other haue nothyng in the tenaũcy, but be called aydours or conductours to the disseisyn.

Disseisin

¶ And ye shal vnderstãd, that a disseisi is properly, where a man entreth into any landes or tenementes there where hys entre is not lawe=ful, and putteth oute hym whiche hathe the fre=holde of the same.

Survi=uour taketh place

And ye shall furthermore knowe, that the nature of ioyntenauncye is, that he whych survi=ueth and ouerlyueth the other, shall haue to him selfe alone the hole & entyre tenauncye ac=cordynge to that estate whyche he should haue had yf the ioynture had bene cõtinued, as (for example) thre Ioyntenauntes be of landes in fee symple, and the one hath issue and dyeth. in thys case the two whyche do ouerlyue theyr fe=lowes, shall haue the hole landes betwene thẽ, and the issue of him that is departed getteth no thyng. And if the second ioyntenaũte hath also issue and dye, the thyrde whiche haue ouerliued them both, shal nowe haue and enioye the hole to him and to hys heyres for euermore.

Diuer=sytie.

But otherwyse it is of coheyres which in our lawe be called parceners. For yf there bee iii. suche coheyres and parceners, & before anye partycion made, the one haue issue a sonne or a doughter and dyeth, hys portion shall descende and fall to his chylde, and shal not runne amõ gest the other ioynte heyres or coparceners.

Howe

Howbeit if suche parcener or coheire had dyed without issue, then should his porcion haue discended to his coheyres. But how not by force of survivour or overliving whiche in latin is called ius accrescendi, but by verye discente, for where anye of the coheyres dye wythout issue, who can be heire to hi or her so dyeng, but the other coheyre to him or her so dyinge, but the other coheire or the rest of the coheires if there be many. ¶ And like as this righte of survyuer or overlyuyng holdeth place amonges ioyntenauntes of landes and tenementes, so in like maner it holdeth place amōges the which haue ioynt estate or possession w̄ others of chateiles whether they be real or personal. As (for example) if a lease of landes or tenementes be made to many for terme of certaine yeres the overliuer or overliuers shal haue the hole during the terme by force of ye same lease. So of chattels personall, yf an horse, ore, grayne or other such personal chattell be geuen to many, he whiche overliueth shal haue the same alone. In sēblable wise it is of dettes and duties. For if an obligatiō be made to many for one det, and of so other couenauntes and contractes.

Ioyntenauntes of real or personal goodes.

☞ Also some ioytenauntes maye bee whyche maye haue ioynte estate + be ioytenauntes for terme of their lyues, and yet haue seueral inheritauntes. As where landes be geuen to two men and to the heires of theyr two bodies engēdred, in thys case, these two personnes haue ioynte estate for terme of their two lyues. And yet they haue seueral inheritauntes. For if the one haue issue and dye, the other that survyueth shal haue al by force of ye survivour for terme

Ioyntenauntes of seueral inheritauntes.

of his lyke. And yf he that survyveth hath also issue and dye, thã the issue of the one shal haue the halfe of the lãdes, & the issue of ye other shal haue thother halfe, and they shal holde the land betwene them in commune & shal not be ioyntenaũtes, & tenauntes in cõmon and the cause and reason why such donees in such cases haue ioynte estate for terme of their lyues, is for ye at ye beginning the landes were geuẽ to the two which wordes without more sayinge, make a ioint estate to them for terme of their liues, for if a mã wil let land to another by dede or without dede, not makynge mention what estate he hath, and of this maketh liuerie of seisin, in thy case the lease shall haue state for terme of hys life. And if he haue no lynerye of seasyn he is but tenaunt at wyll. And so for asmuch as the landes were geuen vnto the, they haue a ioynt estate for terme of theyr lyues. But the cause why they haue seuerall inheritaũce, is thys, for that they cã not by possibilitie haue an heire betwene the engendred as a mã & a woman may haue wherfore the law wil ye their estate & their inheritaunce shalbe suche as reason wyll after the forme and effecte of the wordes of the gifte and that is to the heyres that the one engẽdred of his body by and of his wiues, & to the heyres that the other gendreth of his body by anye of his wyues. So it behoueth by necessitye of reason, that they haue seuerall inheritaunces. And in such case if ye yssue of one of the ẽ after ye deth of them both doth dye, so that he hathe no issue aliue of his body engendred, then the donoure which gaue the landes or his heyres may entre in the halfe as in his reuersiõ though the other hathe

Tenãtes in cõmon

hath yssue aliue. And the cause is ꝑ forasmuche as the inheritaunces be seuerall, therfore the reuertion in the law is seuered, & the survivour of the yssue of the other shall holde no place to haue the hole. And as it is sayd of males & the same manet it is wher lādes be geuē to two females & to ꝑ heires of their.ii.bodies begotten ¶ Also yf landes be geuen to two and to the heires of one of them, this is a good ioyntenauntye, and the one hath a freeholde, and the other hath a fee simple, and if he which hath fee sipledye, he that hath the frehold shall haue the hole by the survivour for terme of his life.

Survivour holdeth no place.

¶ And if these two ioyntenauntes ioyne in a gifte in the taile to a straunger, reserving a rēt to him that hath a state but for hꝭ life, thꝭ reseruation is voide to make a tenure. Likewyse it is where tenementes be geuē to two to the heires of the body of one of thē engendred the one hath freeholde and the other in fee tayle.

¶ Note, yf two ioyntenauntes be seased of estate of fee simple, and the one graunteth a rēt charge by his deede to another out of ꝑ whiche to hym belongeth, in this case duringe the life of the graunto ur, the rēt charge is good and effectually, but after his decease the rēt charge is voyde, as to charge the landes, for he that hath the land by the survivour shall holde al the lād discharged, the cause is for that he that survyueth, claymeth to haue the lande by the survivour and not by descent of his felowe.

Rent charge graunted by a ioyntenaunte.

But otherwise it is of pceners or coheires for if there be.ii.pceners in fee sipleꝰ & before anye pticiō made, the one chargeth that, ꝑ to him belōgeth by hꝭ dede of a rent chargeth & dieth wī-

Diuersite.

out issue, here that which to him belongeth discendeth to the other percener and in thys case the other parcener shal holde the lād charged bi cause he cometh to ye halfe by descent as heire.

¶ Also if there be two iointenauntes in fee simple, within one borough where the landes & tenemētes within the same borough be diuisible by testamēt, if the one of the saide iointenaūtes deuise that which to him belongeth, by testament and die, this deuise and legacion is void. And the cause is for that, ye no deuise may take effect tyll after the death of the testatour which bequethed and deuised the same, & by his death all the lande incontinent commeth by the lawe to his felowe that suruiueth by the suruiuour which neyther claymeth nor hath any thing in the lande by the deuise but in his owne ryght by the suruiuour after the course of the law & for this cause such deuise is voyde.

Deuise by testament

A groude of ye lawe

¶ But otherwise it is of parceners seased of tenementes diuisable in such case of deuise for the cause aboue remēbred. Also it is commōly sayde, that euery iopntenaunt is seased of the lande that he holdethe iopntlye pur my et par tout, that is, throughe out & by all. And this is as muche to say, that he is seased by euery parcell and by all whiche sayinge is true for in euery parcell and parte and throughout all the landes and tenementes he is iointly seised with his felowe. And therfore if the one iopntenaūt make a feffement to his cōpanion, this is voide bycause he cā make no liuery of season to him

Diuersitie.

Also if two iopntenauntes be seased of certain lādes in fee simple, & thone letteth that, ye to hi belongeth to a straūger for terme of. xl. yeres &

dyeth

dyeth within the terme, in this case after hys death the lessee may entre and occupie the halfe to him letten during the sayd terme though the lessour neuer had possessiō of it in the lif of the lessour by force of the lease. And the differente betwene the case of the graunt of a rent charge & this case is this that in the graunt of a rente charge by a iopntenaunt the landes or tenemētes abyde alwaye as they were afore wythoute that, that any hath right to haue percel of the tenementes but them selfe and the tenemētes abyde in such plite as they were before ꝑ charge But where a lease is made by a iopntenant to another for terme of yeres, incōtinent by force of the lease the lesse hath right in the same lāde, that is to say, of all that, that to his lessour belongeth by force of the same lease duringe hys terme. And if the lessoure in this case die the other iointenaunt shal haue the rent or ferme duringe the saide terme bicause the reuersion is come to him by survivour. Finally if a iopnt estate be made of lande to the husbande & wyfe and to the third personne, in this case the husbande and the wyfe haue not in the law ¶ their ryghte but the halfe, and the thirde person shal haue as muche as the husbande and the wyfe haue, that is to saye, the other halfe.

Diuersite betwen a graunte of a rente & a lease.

¶ And the cause is for that the husbande and wife be but as one person in the eye of the law and it is here in like case as if estate bee made to two iopntenauntes where the one hathe by force of iopnture the one half, and the other the other halfe. In sēblable wise it is where estate is made to the husband and wife, and to other two men, in this case the husbande & the wyfe

haue not but the thyrd parte and the other two men the other two partes.

¶ Also if two or thre together disseiseth another of lādes & tenemētes to their owne vses then such disseisours be called toyntenauntes. More shalbe said of this matter touching ioin tenauntes in the next chapiter.

¶ Tenauntes in common.

TEnauntes in cōmō (as I said before) be they that haue lādes or tenemētes ī fee simple, fee tayle or for terme of life which haue suche lādes and tenementes by seueral title, and not by ioint title and none of theym knoweth that which is seuerall to hym. And in this case they ought by the law before particion made betwene them to occupy such landes and tenementes in common & for vndeuided to take the profites in cōmon. And bycause they come to suche landes and tenemē tes by seueral tytles, & not by one selfe ioynte tytle, and their occupacion & possession in the same is amonge them in common. they be called tenauntes in cōmon, or tenaūtes per indiuiso. As for example, if a man enfeoffe ii. ioyn tenauntes in fee simple, and the one of thē alieneth that, that to him belōgeth to another in fee, now the other iointenaunt and he to whō the alienacion was made be tenaūtes ī cōmon for that they be seased of suche tenementes by seueral tytles, for the one commeth to the one halfe by the feoffement of the iointenaūte and the other hath the other halfe by force of the first feoffement made to him and to his firste felow and so they be in by seuerall tytles & by

seue-

seuerall feoffementes.

¶ And it is to wit, that when it is sayd in any boke, that a man is seised in fee without more sayinge or additiō, it shalbe vnderstand fe simple, for it shal not be vnderstād by such worde in fee that a mā is sealed fee taile, except there be but in it suche addition (tayle.)

Diffinity on of fee onely.

¶ Also if three ioyntenauntes be and ye one of them alieneth that whiche vnto him belongeth to another in fee, in this case the alyence is tenaunt in common with the other. ii. ioyntenauntes. But yet the other two ioyntenaūtes be seased of ye two partes ioyntly, & of these two partes the survivour betwene them holdeth place.

Joyntenauntes.

¶ Also if there be two iointenauntes in fee, and the one geueth that, that vnto hym belongeth to another in the tayle, the donee and the other ioyntenaunt be tenauntes in cōmō. But if the landes be geuen to two men, and to ye heires of their two bodies engēdred, the done haue ioint estate for terme of theyr lyues, and yf eche of them haue issue and dye theyr issues shal holde in common.

¶ Also if landes be geuen to two men to haue and to hold, the one halfe to the one and to his heyres, and the other halfe to the other and to his heyres, they be tenauntes in common.

¶ Also if a man seased of certayne lādes enfeoffeth another in the halfe of the same land wout any speche of assignement or limitation of the same half in seueraltie at the tyme of the feoffement, then the feoffe and the feoffour shal hold their partes of the lande in common.

¶ And as it is of tenantes in common of landes or tenemētes in fee simple or fee tayle, euē

so it is of tenaũtes for terme of life. Therfore yf two iopntenaũtes be in fee, the one letteth to a mã that, that vnto him belõgeth for terme of life and the other iopntenaunte letteth that whiche to him belongeth to another for terme of lyfe also, these two lesses be tenauntes in cõmon for terme of theyr lyues.

Iointe-nauntes.

Also if a man let landes to two mẽ for terme of theyr lyues, of whom the one graũteth al hys estate to another: then that other tenaunte for terme of lyfe, and he to whõ the graũt is made shalbe tenaũtes in cõmon during the time that both lesses be alyue.

Note yf there be two iopntenantes in fee, and the one letteth that, that vnto him belõgeth to another for terme of life: the tenãt for terme of life duringe his lyfe, and the other tenaunte that did not let, be tenauntes in cõmon. And vpon this case a question may rise as this. Let the case be that the lessour hath issue and dieth, lyuinge the other iopntenaunt his felowe, and liuing the tenaunt for terme of life, the question is whether the reuersiõ of the halfe that the lessour hath shal discende to the issue of the lessour or whether the other iointenaũt shal haue it by the suruiuoure or no. And some haue sayde, that the other iopntenaunt shal haue the reuersion by the suruyuoure, for as muche as when the iopntenauntes were iointly seised in fee simple, thoughe one of them made estate of that, that vnto him belongeth for terme of life, and though he hath seuered the franketenemẽt of that, that to him belongeth by the lease, yet he hath not seuered the fee symple.

Questiõ.

But the fee symple abydeth to them iopntly as it was

it was before. And so it semeth vnto the, ye the other toyntenaunt which survyueth shall haue the reuersiō by the survivour. But other haue thoughte the contrary, and thys is their reasō. When one of the toyntenauntes letteth that which vnto hym belōgeth to another for terme of lyfe, by suche lease the franke tenemēt is seuered from the toynture. So that the reuersiō that is dependaunt vnto the same franke tenemēt is seuered from ye toynture. Furthermore yf the lessour had reserued to hym a yearly rēt vpon the lesse, the lessour onely should haue the rent which is a proofe ye the reuersiō is onely in him, and that the other hath nothyng therin.

Also yf the tenaunte for terme of lyfe were impleded & make defaute after defaute, the lessour shalbe onely here vpon receyued to defēd hys ryght & not his felowe, wlych proueth the reuersyon of the halfe to be onely i the lessour and so consequently, yf the lessour die, lyuynge the lesse for terme of lyfe the reuersyon shall discende to the heyres of the lessoure and shall not come to the other toyntenaunt by the survivour after these mes opinions, yet it is doubt. But in thys case, yf the toyntenaunt that hath the franke tenement, haue issue and dye, liuing the lessour and the lease, then it semeth that the yssue shall haue the halfe in hys demesne, as of fee by dyscent for asm che as the franketenement may not by nature of the toynture be annexed to a reuersion, and it is certayne that he that letted was seased of the halfe in hys demesne as of fee, and that none shall haue anye toynture in hys franke tenement. So that this shal discende to hys issue.

Relcette.

Quere.

Release. ¶ If thre ioyntenãtes be, and the one releaseth by his dede to one of his felowes al the rygh̃te he hath in the lande, then hath he to whõ the release is made the third part of ꝑ lãdes by force of the release, & he and his felowe shal hold the other two parties ioyntly. And as to the thyrd part ꝑ he hath by force of the release, he holdeth it wyth him selfe and his felow in common.

¶ And it is to wyt, that sometime a dede of release shal take effect to put the state of him that made the release in him, to whõ the release is made in case aforesayd.

¶ Also if a ioint estate be made to the husbãd and wife and to a thyrd person, and the thyrde person releaseth his rightе that he hathe to the husbande: then hathe the husbande the halfe which the thyrd person had, and the wyfe of this hath nothing. Semblably if the third person had released to the wife not naminge the husbãd in the release, then shuld the wife haue the halfe that the third person had, and the husband nothing of this but in right of his wyfe bycause such release shal enure to put the estate to him to whom it was made of al that, that belongeth to him that made the release. Agayne in some case a release shal enure & serue to put al the rygh̃t that a man hath that made that release in him to whom it is made. As a mã beynge seased of certayne landes is disseised by two disseisours of the person dysseised by his dede release all his rightе to one of the dysseysours, thẽ he to whom the release is made shal haue and hold al to him alone and put out his felowe out of the occupation of it. And ꝑ cause is for that the two disseisours were seased by

Disseysours.

wrong

wrongе by them done agaynst the law, & whan one of thē getteth ꝑ release of hī that had right to entre, this rygh̄t resteth in him to whom the release is made, and in such plite as if he ꝑ had the rygh̄t had entred and enfeoffed hym of the same. And the cause is, for that he that before had an estate by wrong hath now by the release a rygh̄tful state.

¶ And in some case a release shall enure and take effecte by way of extynguyshment, & suche a release shal helpe the ioyntenaunt to whome the release was not made, aswel as hī to whom it is made, as if a man be dysseysed, and the dysseysour maketh a feoffement to two mē in fee, ꝑ the person dysseysed release to one of the feoffees in fee by his dede, thē such reales shal enure to both the feoffes bycause ꝑ feoffes haue estate by the lawe, that is to say, by the feoffemēt and not by wrongе done to any other.

Release by waye of extynguisment

¶ And in lyke maner ꝑ the dysseysour make a lease to a man for terme of lyfe, the remaynder over to another in fee, ꝑ the dysseysye wyll release to the tenaunt for terme of life al hꝭ right, this release serueth aswel to hym in the remaynder, as the tenaunt for terme of lyfe. And the cause is for that the tenaunt for terme of life cōmeth to his estate by the course of the lawe, and for this cause the release shal enure and take effecte by waye of extinguishment of the right of hym that hath released. And by this release the tenaunt for terme of lyfe hath no greater estate then he had before the release made vnto hym, and yet the rygh̄te of hym that released is al vterly extynctе and gone. Wherfore forasmuche as such release cā not enlarge the state of the tenaunte

A release shal enure to hī in the remaynder.

naunt for terme of life, it is reason, that it shal serue hym in the remaynder.

Also if there be two parceners, and the one alyeneth hys parte to another: the other parcener and the alyene be tenauntes in common.

Tenaũtes in common by title of prescripcion.

Furthermore tenauntes in common maye be by title of prescripcion yf the one & his auncestours or they whose estate he hath in ye halfe haue holden in commõ the same halfe with the other tenaũt that hath the other halfe and with his auncesters or them whose estate he hathe as vndeuyded tyme out of mynde.

Accions seuerall.

And ye shal marke, that in some case tenauntes in common ought to haue of their possessiõ seueral acciõs, and in some case they shal ioyne in one action, for yf there be two tenaunites in common & they be dissesed, they ought to haue against the dessesyour two assyses and not one assyse. For euery of them ought to haue an assyse of hys halfe, because they were sesed by seueral tytles, but otherwise it is of ioyntenauntes, for if there be. xx. ioyntenaũtes & they be dissesyed, they shal haue in al their names but one Assyse, byeause they haue but one ioynte tytle.

Assyse.

Also if there be thre ioyntenaũtes, of whom the one releaseth to one of hys felowes all the ryght he hathe and afterward the other two be dissesed of the hole, in this case they shal haue in both their names one assyse of the two partyes. And as to the thyrde parte he to whome the reales was made oughte to haue therof an Assyse in his owne name, byeause as to ye third parte he is tenaunt in common.

Diuersyte.

Also as to sue accions that touche the realtye there is a diuersyte betwene parentes that i

in diuers discentes, and tenauntes in commō.
For yf a man seased of certaine landes in fee, hath issue two doughters and dye, & they enter into the landes as coheyres, and eche of them haue issue a sonne & dye wythout particiō made betwene them, so that the one halfe discendeth to the sonne of one percener, and the other halfe to the sōne of the other, and they entre & occupie in commō, and be disseased, in thys case they shal haue in theyr two names one assise, & not two Assises. And the cause is though they come ī by diuers discētes, yet they be coheires & pceners.

Also yf two tenauntes in common of certayne landes in fee, gyue the same to another man in the tayle, or lette it to another for terme of lyfe, yelding annuyte or certayne rente or a pounde of Peper, or an hauke, or an horse, and they be seased of these seruices and afterwarde all the rent is behynde and they distraine for it and the tenaunte maketh there rescous, in this case as to the rent and the poūd of Peper, they shal haue two Assyses, and as to the hauke and the horse but one Assyse. And the cause why they haue two assises as to the rent and pounde of Peper is for that they were tenaūtes ī common by seueral tytles, & when they made a gifte in the tayle or lease for terme of lyfe, sauīg and reseruing to them the reuersyon and yeldynge to him certayne rente: this reseruation is insydente to their reuersyon. Rescous.

And bycause their reuersion is in cōmō and by seuerall tytles, euen as their possession was before the rent and other thinges whyche maye be seuered and which were to the reserued vpō the gyfte or vpon the lease whyche be inci-

dent by the lawe to the reuersion, therfore such thinges so seuered be of nature of reuersion.

Playnte in assyse. Wherfore it behoueth that the rēt and ye poūd of Peper which may be seuered to be the in cōmon by seuerall tytles. And of this they shall haue two Assises, and euery of the in hys Assise shall make his playnt of the halfe of the rente & of the halfe of ye poūd of Peper. But of the hauke and the horse, whyche can not be seuered they shal haue but one Assyse, for it were an absurdyte and thing inconuenīet to take a plaint in assise of the halfe of an Hauke, or of ye halfe of an horse. In like maner it is of the other rētes and seruices that tenauntes in cōmō haue in grosse by dyuers tytles.

parsonall actions. ¶ And ye shall vnderstande that concernynge action personals, tenauntes in cōmon ought to haue them ioyntly in all theyr names, that is to saye of trespas or of offences that touche theyr tenementes in commō, as of breaking of theyr houses, breakynge of theyr closes, & pastures waystyng and defoulynge of theyr grasse, cutyng of theyr woodes, and of fyshynge in theyr poundes and suche other, and they shal recouer ioyntly damages, because the action is in the parsonalyte and not in the realtie.

damage.

Tenātes in cōmon shal haue one actiō of det. ¶ Also yf tenauntes in common make a lease of theyr tenemētes to another for terme of yeares yelding vnto them yerely a certayne rente, if the rent be behynde, they shall haue one action of dette agaynste the lesse and not diuers actions because the action is in the personalytie.

Iourye. But in auoury for ye sayd rēt, they ought to be seuered because it is i the realtye as ye assyse is.

¶ Tenauntes in common of chattels.

IT is to be knowē that as there be tenauntes in common of lādes or tenemētes: so there be tenauntes i commō of possession and properties of chatels aswel real as personall. Of reall asif lease be made of certaine landes to two mē for terme of. xx. yeres, and when they be therof possessed the one graūteth that, that vnto him belōgeth during the terme to another, he to whō the graunt is made and the other shall hold & occuppye in common.

¶ Also yf two ioyntenauntes haue ye ward of the body & of the landes of an heire within age and the one of the graunteth to another that, ye vnto him belongeth of the same ward, the he to whom the graunt is made, & the other ye graunteth not, shal haue and holde it in common. Joyntenauntes of a ward

¶ Of chatels personals, as yf two haue a ioint estate eyther by gyfte or by byinge of an horse, or of an ore, or suche lyke, and the one of them graunteth that, that to him belongeth, here shal the graunt and he that graunted not, haue and possede such chatel personal in commō. And in suche cases where diuers persōnes haue chatels reals or personels in commō & by diuers titles, yf one of them dye, the other that suruyueth shall not haue his felowes parte by the suruyiour, and the executours of him that dieth shal hold & occupie it with him that suruiueth i lyke forme, as their testatour did, or ought in hys life, forasmuch as their titles & rightes were seueral ¶ Also in the case aforesaide, if two haue estate in commō for terme of yeres, and the one doeth

occuppe al and putte the other out of his possession and occupation, thē shal he that is put out haue agaynst thother a wrytte de Electione firme for the halfe. In semblable maner where two hold the warde of land or tenementes durynge the nonage of a chylde, yf one shall putte out the other of his possession, he that is oute shall haue a wrytte de Electione custodie of the halfe, bycause these thīges be chatels reals and maye be apportioned and seuered. But no action of trespasse lyeth for the one agaynste the other (as for example Quare clausū suū fregit et herbā suam cōculcauit et cōsumpsit nor such lyke accions) forasmuch as eche of them maye enter and occuppe in common. But yf two be possessed of chatels, personels in cōmon by diuers tytles as of an horse, or an ore, towe, yf the one take it all to hym selfe out of the possession of the other, the other hath none other remedye, but to take it agayne frō him that hath done hym the wronge, when he may se hys time.

A wrytte de electione firme.

De electione custodie.

trespas.

In lyke maner of chatels reales, which maye not be seuered, as in the case aforesayde, where two be possessyoners of a warde of the body of a chylde within age, yf one shall take a chylde out of the possessyon of the other, the other hath no remedye by any action at ꝑ law, but to take the chylde out of the others possessyon, whē he seeth his tyme.

Fynallye ye shall vnderstand that whan a man in pleadynge and declaryng his cause wyl shewe a deede of feoffement made vnto him or a gyft in fee tayle or a lease for terme of life of any landes or tenementes, shal vse his termes in this wyse, and saye, by force of suche feoffe-

Fourme of pleadynge.

ment

ment, gift, or lease was sealed.

But where a man wyll declare or pleade a lease or a graũt made vnto him of a chatell real or psonal, these he shal say by force of whiche he was possessed.

¶ Of pertition to be made by ioyntenauntes and tenauntes in common inacted.

Anno.xxx.H.viii.

A Ll ioyntenaũtes & tenauntes in cõmon of ani estate of inheritaũce ĩ their own rightes or in the right of their wyues of any lãdes or hereditamẽtes wĩn the realme of Englãde, Wales, or the marches of the same, shall and may be compelled to make partition betwene them of the same, which they so holde as ioyntenauntes or tenauntes in common by a writ de participatione facienda to be deuised in the chauncery in lyke maner as coparceners are compelled to doo, and the same writte to be pursued at the common law. And after such particion made euery of ye said ioyntenauntes and tenauntes in cõmon, shal & may haue ayde of the other: or of theyr heyres, to thintẽt to dereigne the warrantie paramounte and to recouer for the rate as is vsed betwene coparceners after particion made by the order of the common lawe.

Writte. de participatione facienda.

Ayde prayed.

Item in the.xxxii.yere of kynge Henrye the viii. Capi.xxxii. It is further enacted that all ioyntenaũtes & tenaũtes in cõmon which holde ioyntly or in cõmon for terme of life, yeare or yeres or ioyntenaũtes or tenaũtes in common where one or some of thẽ haue estate for terme of lyfe or yeares with other that haue estate of

inheritaunce of free hold in any lādes or other hereditamentes shall be compellable by wrytte of Partition to be pursued out of ye chauncery vpon their cases, to make seueraunce and partycion of all suche lādes & hereditamētes as they hold iointly or in common for terme of life or lyues, yeare or yeares where one or some of thē holde iointly or in common for terme of life or yeares w̄ other that haue an estate of inheritaunce of free hold. Prouyded that no such partycion nor seueraunce, be hurtfull to any person other then such as be parties vnto the said partycion their executours or assignes.

¶ Of conditions.

For almuche as euerye estate is eyther pure or condicinal, it wer nat amisse to make some declaracion of the nature and efficacye of condicions. Wherfore ye shall vnderstande that of conditions, some be actual cōditions, and be called expresse conditions or conditions in dede, & other some be conditions in law which be called also in latin condicions tacite, siue conditiones implicite bycause they be secretlye emplied by the lawe and not expressed.

Diuision

¶ Condicions in dede be suche as be knit and annexed by expresse wordes to the feoffemente lesse or graunt, eyther in wrytinge or withoute as for example, yf I infeoffe a man in certayne landes reseruynge to me, and to my heyres so muche rent yearlye to be payd at such a feaste, & for defaute of payement that it shalbe lawfull for me to reentre, this is a feoffement vpō cōdicion

Condicions in dede.

cion of payment. And here the not of paymēt of the rent shal desolue and vtterly defete ꝑ feoffement, sēblable it is of gifties in tayle leases. ¶ But yf the condicion be, that for defaute of payment of the rent, it shall be lawful for the feoffour to enter agayne into the landes and to holde them tyl he be contented and satisfyed of the rent, thꝭ cōdicion nat perfourmed doth nat dissolue nor vndoe the feoffement, but onelye geueth, so the feoffour an auctoryte to retayne the landes (as it were by wayes of distresse) tyll he hath leuyed ꝑ arrerages of the rente. And ye shall wel marke and obserue, that condicyons be some tyme made to be perfourmed on ꝑ feoffees behalfe, and sometyme on the feoffours behalfe. On the feoffees behalfe, as whan I enfeoffe you of landes or tenementes vpon condicion that he shal do such an acte, as to paye vnto me or myne heyres suche annuel rent. Distres.

¶ On the feoffours behalfe as when I make a feoffement vnto you vpon condiciō that if I pay or cause to be payde vnto you before suche a daye suche a summe of money, then it shal be lawful for me to enter agayne and retayne my landes in my former estate. In thꝭ case he ꝑ is the feoffe is called tenaunt in morgage, whyche is as muche to saye as dedagage and it semeth that ꝑ cause why it is so called, is for as muche as it is doubtful whether the feoffoure wil pay at the day lymyted and preseryhed such summe of money for the redemptyon of his landes or not, for yf he doe nat hys tytle or intresse on the landes thus gaged and oppygnorate is vtterlye extynete and gone wythout al hope of reuuing. Tenaunt tes i morgage.

¶ Ye shal also note, that yf the morgagoure

dieth before the daye of payment, his heire may redeme the lande very wel, euen as wel as hys auncestour ꝑ morgaged the lande mighte haue done althoughe there be no mention made of heyres in the wrytinge.

Also ꝑ when the money is lawfullye by the morgagour or his heyre rendred and profered, & the lessour refuseth to receyue ꝑ same the feoffour or his heyre may enter, & then hath ꝑ feoffe no remedye for his money at the common law

Cõdiciõs voide.

¶ ye shall vnderstande also, that some conditions be vtterly voyde in the law, and of none efficacie, vertue, or strength, as ꝑ a feffement be made of landes in fee simple vpon condycyon, that the feoffe shall not aliene or put away the same to none other, thys condycyon I saye is voyde, because the feoffee is restrayned of hys hole power that the lawe geueth in suche case vnto hym, and whyche power and lybertye, is in maner included in euerye feoffement. yet I maye abbrige hym of parte of hys power, as to condition with hym that he shal not alyene the landes to such a person or suche. But of giftes in tayle otherwise it is, for ꝑ I geue landes to a man and to the heyres of hys bodye lawfully begotten vpon condicion that he nor his heyres shall aliene the landes to none other personne thys condition is good and effectuall in the lawe, and ꝑ he or hys heyres contrarye to the condition do aliene them, then the geuer or his heyres may very well entre and retayne the lãdes for euer because thys condition shall stande with the forenamed statute of westmynster seconde whiche prohibyteth suche alienations to be made.

Gyfte in tayle vpõ condiciõ.

Hitherunto haue I spoken of cōdicions in dede, nowe wil I shewe what be conditions in lawe that be annexed to any estates.

¶ Knowe ye therfore, that yf the office of a Parker, stewarde, Cōstable, Bedell, or balyke or such like office, be graūted to a mā for terme of his life, thoughe there be no condition at al mentioned in the graunt, yet the lawe speaketh of a condition in this case, whiche is that if the partie to whome suche office is geuen shall not execute all pointes apperteyninge vnto his office accordinglye, by him selfe or his lawefull deputie, it shalbe lawful for ỳ graunter to ēter and dyscharge him of his office and this condition is called a condicion in law. There be also thre other maners of estates vpon cōdition that is to say, conditions against the lawe, condicions repugnant, and conditions impossible.

Estates, vpō condiciōs in lawe,

¶ First estates vpon condition agaynst ỳ lawe be, as yf a man make a feoffement, gift graunt or lease vpon condition that yf the feoffours, donours graūtours or lessours kil I. S. which is not the kynges enemye, or burne hys house that then it shalbe lawfull to the feoffours, donours. ꝛc. to reenter, thys condition is voyde & the state is good.

Conditions agaynste the lawe,

And like lawe is yf suche conditions be to be perfourmed of ỳ part of the feoffe, graunte. ꝛc.

But if case be that a lease for terme of yeres be made of lande vpon condyption that yf the lesse kil I. S. that then he shall haue fee simple although that he in this case perfourme ỳ condicion, hys estate is nothynge thereby enlarged because the condition is agaynst the lawe.

Also ye shall vnderstande that where an ob-

Obligation. ligation is endorsed with a conditiō the whiche is against the law: both the obligation and also the condition be clearly voyde in the lawe.

Conditions repugnant. ¶ Estates vpon conditions repugnaunt be as if a feoffement or a gyfte in taile be made vpon condicion that the feoffe or donee, shall take no profyt or shall do no wast, and such other like, suche conditions be voyde and the state good and effectual in the lawe notwithstanding.

¶ Also if a lease be made for terme of life vpō condition ẏ he shal do fealte, this is as a voyde condition.

¶ Likewise it is if a man that hathe nothynge in the maner of Dale graunteth a rent charge going oute of the same vpon condicion that his person shall not be charged, this graūt is good and the condition is voide.

Conditions impossible. ¶ Estates vpon conditions impossible be as yf a feoffement be made vpon condition, that yf the feoffe goeth not through the sea on foote to Caleys in one daye then it shalbe lawful to the feoffee to reenter, this is a frustrate and void cōdition, and yet the estate is good.

¶ Lyke law is of a lease made for terme of ye res. &c. or an obligacion wyth a condycyon impossyble vt supra, the obligaciō or lease is good and the condition voide to all purposes.

¶ An acte how straungers shal take auantage of conditions made. An. xxxii. H. viii.

IT is enacted that as well persone, whyche haue or shall haue any gift or graunt of the kynge by his letters patentes of any landes personages, tytles, or other heredytamentes, or any reuersion of the same whyche dyd belonge

belonge to any monestery or other ecclesiastical
house dissolued or otherwyse come into the kin
ges handes syns the.iiii. daye of Februarye in
the.xxviii. yeare of our souerayne lorde kynge
Henry the eyght, or whiche at any tyme hereto-
fore did belonge to any other person, and after
came into the kynges handes, as also all other
personnes beynge grauntes or assignes to the
kynge or to any other person, theyr heyres exe-
cutours, successours, and assygnes shall haue
like auauntage against the fermours, & their ex-
ecutours, administratours & assignes by entre
for not payment of the rent, or for doyng wast
or other forfaiture, and also shal haue ỳ same a-
uauãtage by action onely of not performyng of
other conditiõs couenates or agremẽtes cõtey-
ned in the indẽtures of their leasses or grauãtes
against the sayde fermours, and grauãtes, their
executours, administratours, and assignes, as
the said lessours or grauãtours thẽselues might
haue had at anye tyme. And agayne mutuallye
and on the other syde, the sayde fermours, and
grauntes for terme of yeres, life, or liues, their
executours, administratours and assignes shall
haue like auauntage against thẽ for any condi-
tion couenaunt or agrement cõtayned in ỳ said
indenture, as they myghte haue hadde agaynste
theyr said lessours & grauntours, their heires &
successours, al benefites and aduauãtage of rets
ueries in value by reasõ of any warrãty of dede
or ỉ law by voucher or otherwise onely except.
¶ Prouided that this acte shall not extende to
charge any person for breche of any couenaunt
or condition comprised in any suche wryting,
but for suche as shall be broken and not perfor-
med

med after the fyrst day of Septēbre in ye. xxxii. yeare of this kynge and not before.

¶ Liuerie of seasyn, and atturnemente.

IN all feoffementes, giftes in tayle, leases for terme of lyfe, or for terme of an others life, of lādes or tenemētes, there cā be no alteracion transmutaciō of possessiō by ye auncīet lawes of this realme onlesse there be a certayne ceremonye adhibited and solēpnised in the presence & sight of neighbours or others, which ceremonye is called lyuery of season.

The manner of lyuerye of season.

¶ And ye shal understand, that this ceremony of lyuery season is done when the feoffour donour, lessour or theyr deputie come with the neyghbours solemply to the landes or tenemētes, and they put the feoffe, donee or lesse in possession of the said landes or tenementes by dyliuering vnto him a clodde of earth, or ye rynge of the dore or some other thyng in the name of season, and for this selfe cause this ceremonye of lawe is called lyuery of sealō, that is to say, a tradicion or geuyng of season.

diuersite betwene possession & seasyn.

¶ But this ceremony is not required in lesses for terme of yeres or in lesses at wil forasmuch as the lessour in such case remaineth styl seased and the lessee onely hathe possessyon wythoute and the seasin, and therfore the termes of the law be that suche a man is possessed, where as in feoffementes, giftes in tayle, and leases for lyfe, he is called seased.

Where

Wherfore yf a feoffement or lease for lyke be made of landes or tenementes & before that the liuerye of seasin be made the feoffour dieth, the heyre of the feoffour shall haue the landes. Per summum ius, that is to say, by the rigour of the law notwithstãding that the feoffer hath payed to the feoffour the price of the lãd, and although ẏ feoffee be in possessiõ. But otherwise it is of a lease for the terme of yeares.

A lyke ceremonye is vsed, whẽ rent charge, rent seruyce, rent in grosse, auowson in grosse, a vyllaine in grosse, cõmon in grosse, common for beastes, certayne estouers, & such other thinges as passe by way of graũt, be graũted, for it is no ful & perfyt graũt til it be consignat & seased as it were with ẏ ceremony of atturnemẽt.

This atturnement is nothing elles, but whẽ the tenaunt of the land of which the reuersyon is graunted, or out of whiche a rent is graũted do make some euydent sygnification and tokẽ that he accepteth the person of whom the graũt is made to be ĩ the same respecte vnto him that the grauntour was. As for an example, yf the tenaunt of the lande after he haue heard of the graunt, commeth to the graunte that is to wit, to the person in whom the graunt was made, & saye in this wise, or in lyke effecte.

Atturnement.

I agree me vnto the graũt made vnto you by such a man, or I am wel apaide & contented of the graunt ẏ such a mã hath made vnto you. But the most vsual and frequẽt forme of atturnement is to saye. Syr I atturne vnto you by force of the sayd graunt, or I become your tenaunt or to delyuer vnto the graũt, a pennie, or a halfe pennye by way of atturnement.

Howe atturnemẽt shall be made.

yf

¶ Yf a man maketh syrste one graunte to one perso, and after another to another perso, that graunt shall stande to which the tenaūt wil atturne although it be the latter graunt.

¶ And ye shall note, that yf a man bee seased of a manour, whiche is percel in demeane, & percel in seruyce, and doth alyene the same Manoure to another, onlesse the tenaūt of the manour do atturne ye seruices shal not passe, onely tenaunces at wyl excepted, for it nedeth not to cause them to atturne.

diuersite. ¶ Note furthermore there is a greate dyfference betwene geuinge a penny in name of seasyn, and geuing by waye of atturnement, for when it is geuen to the tenaunt to that graunt in the name of seasin, it doth not onely implye an atturnement, but also it geueth him tuche a seasin, that yf the rente afterwarde were behynde aud not payed, he maye nowe vppon the seasin of the penny, after a lawful distres takē and after rescous made, bryg an Assise of nouel dyssesine, where as if it were geuen onelye by way of atturnement he could not bring the Assyse, but his wryt of rescous onely.

Assyse.

Wryt of rescous. ¶ Also ye shal vnderstande, that where landes be deuisable by testamēt, by the custome of any auncyent borough or citie, yf there the reuersyon of any landes bee by testement bequethed to a man in fee, and the testatour, which we cal the deuisour dyeth the deuyse, that is to wyte he to whome the deuise was made hathe forthe with the reuersion in him without further ceremonye of atturnement. Lykewyse it is yf a man by testament doth bequethe a rent charge that he is seased of, or a rente seruyce, there nedeth

Atturnementes.

deth none atturnement at all.

¶ Yf two ioyntenaunces be of land and the lord Not acquisite.
de graunteth the seruices to another, if one of ye ioyntenaunces atturneth it is inough.

Finally, yf a lease bee made for terme of life, the remaynder to another in tayle, the remider ouer the ryght heyre of the tenaunte for terme of life, yf in this case the tenaunte for terme of lyfe wyl graunte his remainder in fee to another by his dede, thy remaynder possesseth forthwith, without any atturnement, for if anye atturnemente were requisite it should be made of the tenaunte for terme of life, which in thy case is the graunteur hym selfe. And in vaine it is that the graūtour should be enforced to atturne lyth an atturnemēt is adhybited & had to none other purpose, then to haue the consent and agrement of the particuler tenaunt to thintēt ye it may appeare, that he hath notice & knowledg of this graunt, but here where the particuler tenaunt hym selfe is the graunteur, an atturnement were superfluous, and more then neded.

¶ Note furthermore that where there is lorde and tenaunt, and the tenaunt leaseth his tenementes to a woman for lyfe le remainder ouer in fee, the woman taketh a husband & after the lorde graunteth the seruyces &c. to the husbande in this case durynge the couerture the seruices be put in suspence. But if the wyfe die lyuinge the husbande, the husbaud and his heyres shall haue the rent of them in the remider. &c. And in this case there nedeth no atturnement by word because the husbād that ought to atturne accepteth the graunt of the seruices the whych acceptaunce is one atturnement in the lawe. Suspence.

Hither-

ytherunto haue I brefelye touche & ouerrunne ꝑ sundrye kindes and formes of estates. Now forasmuch as there is no tenure but hathe vnto it some seruyce knytte and annexed. it were very necessarye to declare howe many kyndes of seruyces there be, and what seruice is due to euery tenure. For the knowledge herof ye shal vnderstande that the pryncypal and mooste common kynde of seruyce that the tenaunt oweth to his lorde is called knyghtes seruice.

Knyghtes seruyce.

Knyghtes seruice includeth homage, fealty, and for the mooste parte escuage & who so euer holdeth hys lādes by knight seruice is bound by the law of thys realme to do vnto his lord homāge and fealte & to paye for the most parte escuage, when it shal be assessed by authorytie of parliament, as hereafter more playnly shalle declared.

Homage is the mooste humble and reuerent seruice that a mā of fre estate and cōdiciō can doe, for whē the tenaūt shal doe homage to his lorde, the lorde shal sytte and the tenaunte then knele down before him vpō both knees, holdīg his handes betwene his lordes handes and say in this wyse, I become your man frō this day forewarde, of lyfe and of membre, and earthlye honoure and to you shalbe faythful and true, and faith to you shal beare for the lādes that I clayme to holde of you, sauyng ꝑ fayth that I beare vnto our soueraigne lorde the kinge, and then the lorde so sytynge shall kysse hym. But if an ecclesiastical person, whyche by his order and

Homage.

How the tenaunte shall do homage.

and profession hath addicted hym selfe to the seruice of God in especiall, shall do homage to his lorde, he shal saye: I do to you homage and shal be to you faythful and true, and faythe to you shall beare for the tenementes that I holde of you saluing the fayth, whyche I owe to oure soueraygne lorde the kynge.

What a religious personne shal saye when he doeth homage.

¶ Also when a woman not maryed, dothe homage to her lorde, she shal not say, I become your womã for it is not conuenient that a woman should be the woman of any other thē of her husbande, that she shal marye, but shal saye euen as the ecclesiastical person sayeth: I do vnto you homage. &c.

What a woman shall saye

¶ And yf perchaunce a man holdeth sundrye landes and tenementes of sundrie lordes, and euery of them by knyghtes seruice, then in the ende of his homage makynge, he shall saye: saynge the faythe that I owe to our soueraigne lord the kynge, and to myne other lordes.

What tenaunte shall do homage.

☞ And none is bound to doe homage to the lord onles it be such a tenaunt as hath in the tenaūcye an estate of fee simple, or fee taile, either in his owne ryght, or in the ryght of an other.

¶ For yf a woman haue landes or tenementes in fee symple or fee tayle, whyche she holdeth of her lord by knyghtes seruice, and taketh an husbande and haue issue, in this case the husbande in the lyke of hys wyfe, shall doe the homage, because he hathe a tytle to haue the landes by the curtesye of Englande, yf he oueryueth her and also he holdeth theym nowe in his wyues ryghte, yet before yssue had betwene them the homage shall bee made in bothe their names. But yf the woman dyeth before any

homage made in her life, and the husbād in her life, and the husband kepeth still the landes as tenant by curtesie, now he shall not do homage to his lord bycause he hathe now an estate but for terme of life.

Fealtye.

¶ Fealtye, is as muche to saye as a fidelitie or faythfulnes, in doinge whereof the tenaūt shal holde his hande vpon a booke, and saye thus, Here you this my lorde, I to you shalbe faythful and true, and faith to you shal beare for the landes and tenementes, wherthe I clayme to holde of you, and duely shall do you ye custome and seruices whiche I owe to do you at ye termes assigned, as me helpe God and his saictes. And then he shal kysse the booke, but hee shall not kneele as he that doth homage, nor do such humble or reuerēt seruice as is before declared in homage.

Howe a tenaunt shall do fealtye.

Do ye vnderstande betwene homage and fealtye.

¶ And ye shall obserue, that homage canne not bee done but to the lord him selfe, where as the stewarde of the lordes court or the bailife may take fealtye for the Lorde. Also tenaunte for terme of lyfe shal do fealtie, but homage as I sayde, he can not do.

Escuage.

¶ Howe as concernynge escuage, that is to saye, the seruice of the shylde ye shal vnderstād, that he that holdeth his landes by escuage, whē the kynge maketh a vyage royall into Scotland for the subduing of the Scottes, is bound to bee with the kinges maiestie by the space of xl. dayes wel and conueniently arayed and appoynted for the warre. And he that holdeth his lande but by the moytye of the fee of knyghtes seruice, is bound by the force of his tenure to be with the kinge by the space of xx. dayes, and

so

so proporcynably accordyng to the rate & quantitie of his tenure.

¶ But nowe to our institute and purpose, after this vyage royal into Scotlande, in whiche the kyng goeth in personne, and after the retyre into Englande agayne, a parlymente is wonte to be summoned, in which shalbe prescribed and assessed whan euery personne ỳ holde his lande by homage, and went not wyth the kyng neyther by hym selfe, nor by his deputie, shal paye to his lorde in satisfaction, of hỳ not seruynge, and accordynge to the taxion hereof euery tenaunt shal pay to his immediate lorde whether it be the kyng or other after ỳ rate and portion of his tenure yf he holdeth by an hole fee, he shal paye the hole escuage, yf by a moytye, the halfe, yf by the fourth parte of a fee the fourth parte. ꝛc. and this money thus assessed is called scutage or escuage, for which the lorde to whome it is due, may verie wel for the none payment therof dystreyne.

Parliament.

Dystresse for escuage.

¶ But here it is to be noted, that some tenauntes by custome vsed time out of mind are boūd to paye but the moytye, or the thyrde parte of that whiche shalbe assessed & limitted by acte of parlyament.

¶ yea, and the custome is in some place, that to what summe of money so euer escuage is assessed, the tenauntes shal paye neuer but such a certayne summe of money and this kynde of escuage is called escuage certayne, that is to say, where escuage is assessed by the parliamēt to a more or lesse summe the tenaūt to pay to ỳ lorde. v. s̄. and no more nor no lesse. ꝛc. suche a tenure is called Socage tenure & not knightes

Escuage certayne.

seruyce, where as the other is called escuage vncertayne.

Escuage vncertayne.

¶ Fynally ye shall vnderstand, that escuage vncertayne is alwayes adiuged to be knyghtes seruyce, and drawetb, vnto it warde, maryage and raleike, but escuage certaine is no knightes seruice but is of the tenure of socage as shal be hereafter more amply shewed.

☞ Of warde mariage and relieke.

EVery knyghtes seruyce drawetb vnto it warde maryage and releyke. Wherfore it is nowe ryght expedyent somewhat to .. .. entreate of them.

Warde.

¶ ye shall therfore be admonysched, that when the tenaunt whych holdeth his landes by knightes seruyce dieth, hys heire male beyng at that time within the age of. xxi. yeres, the lorde shall haue the warde, that is to saye, the custodye or keppynge of the landes so holden of him to hys owne vse, and profytte, tyll the heire commeth to the full age of. xxi. yeres. For the lawe here presumeth that tyl he come to this age, he is not able to do such seruyce, as is of thy tenure requyred. Furthermore if suche heyres bee vnmaryed at the tyme of the deathe of the tenaunte, then the lorde shal haue also the warde and the bestowyng of the maryage of him.

maryage.

The full age of a woman.

¶ But yf a tenaunt by knyghtes seruice dieth, hys heire female being of the age of. xiiii. yeres or aboue, then the lorde shall haue the warde neyther of the lande ne yet of the body of such an heire, and the reason hereof is bycause a woman of that age may haue a husbande able

to do

so do knyghtes seruice, that is to say, to wayte vpon the kinges maiesties person, when he auañceth into Scotlande with his armye royal.
¶ But if such an heyre female be within age of.xiiii.yeres, and not maried at the time of the death of her auncestour, then ye lord shall haue the warde of the lande holden of him, tyl suche heyre female cometh to the age of.xvi. yeres by force of an acte of parliament in the statute of Westminster the first Cap.xii.

¶ Note that there is a great diuersitie in the law betwene the ages of females and of males for the female hath these many ages appoynted by the lawe. Fyrst at.vii.yeres of age the lorde her father may distraine his tenauntes for aide to marye her. Seconde at.ix.yeares of age, she is dowable. Thirdlye at xii.yeres she is able to assente to matrimonye. Fourthly at.xiiii. yeares she is able to haue her lande, and shall be out of warde yf she be of this age at the death of her auncestour.

Diuersitie of age.

Age of a woman.

¶ Fyftlie, at.xvi.yeres she shalbe out of warde, though at the death of her auncestour she was within age of.xiiii.yeares.
¶ Sixthy, at.xxi.yeres she is able to make alienations of her landes or tenementes. Where as ye man hath but two ages, the one at.xxiiii.yeares to haue his landes holden in socage, and to assent to matrimonie, the other at.xxi.to make alienations.

The age of a man.

¶ ye shall vnderstande that by the statute of Merton, the syxte Chapiter, it is enacted, that yf in case the lorde do mary theyr warde to villaynes or others, where is dyspargemente, yf such heyres so maried be within the age of.xiiii

yeares or of suche age that the sayde warde can not consent to the marpage, then yf the frendes of this heyre complayne and feele them selues greued with thys vnmete mariage, the nerte of kynne to the heyre, vnto whome the herytage can not descend, may enter into the landes, and put out the lord, which is gardeyne in cheualrye, and yf the nert kinsman will not thus do, an other kinsemã of the infante may do it, and shal take the issue and profites to the behouf & vse of the heire, and shal yelde accõptes thereof vnto him when he cometh to his full age.

Accompte geuinge.

¶ Also there be dyuers other dispergementes, whyche be not expressed in the sayde statute, as yf the heyre beynge within age of consente, and in warde be maryed to a decrepte personne, or creppyll, as to one that hath but one foote, or one hande, or that is deforme creature, or haupnge any horrible disease or continuall infirmytie. All these and suche lyke be dyspergementes. But here also ye shall vnderstande, that it shall be sayd no dispergement, oneles the heire be so maried when he is within the age of discrecyõ, that is to say, within the age of. xiiii. yeres. For yf he be of that age or aboue, & assenteth to such mariage, it is no dispergement neither shall the lord for suche marpage lose his ward, bicause it shalbe reputed and assigned to the folye of the heyre beyng of age of discrecyon, to consent to suche mariage.

Diuers dispergementes.

¶ Nowe yf the lorde, then beynge gardeyne offre to the heire beynge in hys warde a conuenient marpage withoute dispergement, and the heyre refuseth it as he may at hys choise and election very wel do, then the lorde shall haue ye

valus

value of the marriage of such heire whā he cometh to his full age. But yet yf he marye hym selfe beynge so in warde agaynst the wil of his gardeyne, than he shal pay the double value by force of ỳ statute of Glocester before remēbred.

Value of marriage

Double value of marriage.

¶ And ye shall note, that yf landes holden by knyghtes seruyce descended to an vnkin or child within age from his mother or frō ampe of his auncestours his father beyng yet alive, in thys case the lorde shall not haue the marriage of his heire, for during the lyfe of his father, the sōne shalbe warde to no man.

One shall not be warde lyuinge hys father.

¶ Finally, it is to be knowen, that he which is gardeine in chiualry in right, may after he hath seased the warde, graūt the same either by dede or wythoute dede to an other man, and than he to whome suche a graunt is made, is called gardeyne in faite.

¶ Nowe as touchyng relieke, ye shall knowe that if a man holdeth his lande by knightes seruice and dieth, his heire beyng of ful age (ỳ ful age of the male is. xxi. yeres, of the female, xiiii) then the lorde of whome the land is holdē shall haue of the heire relieke.

Relieke.

¶ Note ye that all Erles, baron or other the kinges tenauntes holding of him in chieke by knyghtes seruice dye, at the tyme of hys death hys heyre be of ful age, that is to say. xxi. yeres he ought to paye the olde relieke for hys enheritauce that is the heire or heires of an Erle, for an hole Erledome one hundreth pounde. The heyre or heyres of a Barōe for an hole barony one hundreth markes. The heyre or heyres of a knyght one hūdreth shillinges, and he that hath lesse, shall geue lesse accordynge to the olde cus

some of fees, lyke lawe is obserued of al other that holdeth of any other theyr lordes immediate, vt supra.

¶ Also a mã may hold landes of a lord by two knyghtes fees, and then the heires being of full age at the death of his auncestours, shal pay to his lorde for relieke, x. poundes.

Seruyce of castell garde.

YE shall vnderstande ꝑ a man may hold by knightes seruice and yet not hold by escuage, nor shal pay an escuage, for he may holde by castel gard, that is to say, by seruice to kepe a towre of his lordes castel or some other place, vpõ a reasonable warnynge, when his lorde heareth that enemyes wyl come or be al readye come into Englande.

¶ This seruice is also knightes seruice, & draweth to it wardmariage and relieke, as in all cases the common knyghtes seruice doeth.

Grounde in ꝑ law.

Of graunde sergeantie.

THere is also another kynde of knightes seruice, whiche is called graunde sergeantye, that is where a man holdeth his lãdes or tenementes of the kinge by such seruice as he oweth in proper persõ to do, as to beare the baner of our soueraygne lorde the king, or his speare, or to conducte his hoste, or to bee his marshall, or to be the sewar, carver: or butlar, at the feaste of the Coronation, or to be one of the chamberleynes of the receypte of his eschequere, or to do lyke seruyce to the kynge in proper personne, suche

maner

maner of seruice I saye, is called graunde sergeantie, that is to say, a great or hyghe seruyce, and the cause why it is called, is bycause it is the moste honorable and moost worthy seruice that is, for he that holdeth by escuage, is not appoynted by his tenure to do anye other more speciall seruyce then another is bound that holdeth by escuage, but he that holdeth by graunde sergeantie, is bounde to do some special seruice to the kinge.

The most highe seruyce.

¶ Also yf he that holdeth of the kyng by graūde sergeantie dieth, hys heyre beynge of full age, than the heyre shall pay to the kyng for relieke, not onely.x.s. as he that holdeth by escuage shal do, but moreouer the clere yearly value of those landes & tenementes which he so holdeth of the kynge by graunde sergeauntie.

Relief of ỳ tenaunt by graūde sergeantie

¶ Furthermore ye shall obserue that in ỳ marches of Scotlande, some men hold of the king by cornage that is to saye, by blowynge of an horne, to thintent to warne ỳ mē of ỳ countrey when they heare that the Scottes or other their enemyes be cōmyng or be already entered into Englande whiche seruice is also a kynde of graunde sergeantye.

Tenure bi cornage

¶ Graūd sergeantie therfore is as much to saye in Latine, as magnum seruitiū, that is to say, a great or hyghe seruice, lyke as petti sergeātye is called Paruum seruiciū, that is to say: a little or smal seruice.

Diffinition on of sergeantye.

¶ But to reuerte agayne to the matter, ye shall note yf any tenaunt holdeth of any other lorde thā of the kyng by such seruice of cornage, than it is no graund sergeātie but yet neuertheles it is knightes seruice, and draweth to it ward ma

ryage and relif for this is a rule infallible that none can holde by graūde sergeantie but of the kynges owne maiestie.

¶ Fynally ye shal understād that al they which hold of the kyng by this seruice called graunde sergeantie do holde of the kynge by knyghtes seruice, and by vertue of this tenure, the kynge shall haue of them ward, mariage, & reliefe, but escuage yet he shall not haue of them, onles they holde by escuage of him by expresse and special wordes.

Role in the lawe.

¶ Petite sergeantie.

TEnuant by petite sergeātie, is he ꝑ holdeth his lande immediatly of our souerayne lord the kyng by thys maner of seruice to pay to the kynge yerely either a Bow, a speare, a dagger, a payre of Gauntlettes, a payre of spurres of Golde, a Shafte, or suche other smale thynges apperteynynge to the warre, and thys seruyce is in effecte but socage, bycause that suche a tenaunte is not bounde by his tenure to go ne doe anye thynge in his owne proper person touchyng the warre but onelye to render and paye yearelye certayn thinges to the kinge, as a man ought to paye a rent. Wherfore this seruice of petite sergeāty is no knightes seruice, but yet ye shal note, that a man can not holde neyther by petite sergeātie neyther by graunde sergeantie, but of the kynge onely.

Petite sergeante is socage in effecte.

¶ Homage auncestrell.

TEnāt by homage aūcestrel is he whiche holdeth his lāde of his lorde by homage & both he & his aūcestoures whose heyre

he is, haue holden the same lande of the sayde lorde, and of his auncestours tyme out of mide by homage, and haue done vnto them homage, and thys is called homage auncestrell, by reason of the longe continuaunce which hath bene by tytle of prescriptyon, as well concernynge the tenauncye in the bloude of the tenaunte, as concernynge the lordeshyppe in the lorde. And thys seruice of homage auncestrell drawetb vnto it warrantie (that is to saye) yf the Lorde whiche is nowe in life hathe ones receiued the homage of his tenant, he ought to warrant the same tenant, what time soever he shalbe impleaded, or sued for suche landes so holden of hym by homage auncestrell.

Warrãty because of homage aũcestrell.

¶ Moreouer suche seruice of omage auncestrell drawetb to it acquitall, that is to say, the lorde oughte to acquite the tenaunt against all other lordes that can demaunde any maner of seruyce of the tenauncie.

acquitall.

¶ Wherefore yf in this case the tenaunt whiche holdeth by homage auncestrell, be impleaded of hys landes, and vouched, or calleth his Lorde to warrantie, who commeth in by processe, and demaundeth of the tenaunte what he hathe to bynde hym to the warrantie, and the tenaunte sheweth howe he and his auncestours, whose heyre he is, haue holdẽ his lãdes of him and of his auncestours time out of minde, surelye the lorde if he can not deny this, and if he hath receyued the homage of suche a tenaunt is boũde by the lawe to warrant him his land, so that yf the tenaunt lose his lãdes in defaute of ꝑ lorde thus vouched, that is to say, called to warrantie, he shall recouer agaynste him so muche in

Voucher.

value

value of those landes and tenementes which the lorde had at the tyme of callinge to warrantye at any tyme after. But yf the lorde neuer receyued the homage of his tenaunt, thē he may verye well when he is thus vouched disclayme in the lordeshyp or seignory, & so put out the tenaunt of his warrantye. Where ye shal note that in euerye case where the lorde disclayme in his seignory in courte of recorde, his seignorye or lordshyp is extinct, and the tenaunt shal hold from thenceforth of the next lorde to hym that thus disclaymed.

disclaime

¶ Thus ye perceyue that homage auncestrell is not but where as is a longe contynuaunce, as well in the bloud of the tenaūt in respect of his tenauncye, as in the blud of the lord in respecte of his seignory. Wherfore yf the tenaunt doeth ones alienе his landes to another, although he purchase the same agayne, yet he shall not holde any longer by homage aūcestrel because of this discontinuaunce, but shall holde it nowe by the volgare and accustomed homge.

☞ Of lyueries.

Tenāt in chieke of ye kynge.

When one dyeth which held of ye kynge by knightes seruice in capite, that is to say, in chieke, his heires being ye in age, the king (as before declared) shall haue the warde and custody, aswell of the landes as of the body, that is to wyt, the mariage, yf he be vnmaried. But yf the heyre be of ful age at the tyme of the death of such aūcestour, yet shal the kynge by his prerogatyue royall haue primer season of all the landes, tenementes and other

Primer seasyn.

heredi

hereditamentes wherof such his tenaunte was seysed in his demene as of fee. And yf suche an heyre wyll entre into his landes when he commeth to hys ful age before he sue hys lyuerye, and receiue seisyn by the king, no fre holde shal accrewe nor growe vnto him but he shal be demed an intruder in the kynges possessyon: yea and yf he dye so seysed in the meane time, hys wife shal haue no dowry of such lādes, wherefore it behoueth in any wyse that such heyre alwel male as female cōmīg to full age before he or she enter into theyr land to sue liuery. The maner and forme wherof accordyng to the acte of parlyamēt lately promulgated and set forth I intende briefly to recyte.

Intruder of the kinges poiseſsyon.

Howe heyres ought to sue theyr lyuerys, enacted. xxxiii. Henrici. viii. Cap. xxii.

NO persone or persones hauing landes or tenementes aboue the yerely value of. v. li shall haue any lyuerye before inquisitiō or office found before the eschetour or other cōmissioner by vertue of ye kīges wryt of diē clausit extremū, or commission directed out of the chauncerye or other courtes hauing auctoryte to make such a wryt or commissions, whych shal not passe out of the same but by warrant or bil assigned, & subscribed by the mayster of the wardes or liueries, ye surueyour, atturuey & receiuour of ye said court or iii. ii. or one of them to be dyrected and deliuered to the Chunteler of England, or to anye other

Wryt of diem clausit extremum.

other chauncelor or officer hauyng power to awarde suche wryttes, and for the wrytynge and sealyng of the same shalbe payed of the accustomed fees. But yf the landes excede not ye sayde yerely value of. v. li. the they shal pay for ye seales of euery such wryt or cõmissiõ. vi. d. a for the wrytynge. vi. pence and not aboue.

¶ And the inquisitions and offices here vpon founde shalbe retourned by the sayd exchequers or commissioners in to the same courte, from whense the wrytte or commission was awarded, whyche done, the clerkes of the petye bagge shall receiue the same offices and make a transcripte therof to the sayd Mayster of the wardes and liuerys. And then the said maister and the surueyour, attourne and general receiuour, or. iii. of them wherof the mayster or surueyour to be one, shal couenaunte and indente with suche personnes for theyr liuerye of ye castelles, manours, lordshippes, lãdes, tenemẽtes and hereditamentes comprysed or not cõprised in such offyces, and shall make and set the rate and prycc of the same, and appoynte the dayes of payment therof by obligation to be take for the same to the kynge.

¶ And euery syl, for anye special or generall liuerie assigned, by the handes of the said maister, surueyour, atturney, receyuoure or. iii. of the, wherof the maister, or surueyour to be one, shalbe warrãt sufficient to the Lord Chauncelor or other officer hauinge power to passe lyuerieis vnder anye of the kynges seales accordingely. In which case ye clerkes of the petite bagge, or other clerkes, by whome the lyuerieis be wrytten shal receiue a fee for the seluis, as

for

for other such fees as hath bene accustomed.

¶ Item euery person maye sue at his pleasure a general liuerye for any manours, landes, tenementes, rentes, reuersions, remainders, or other hereditamentes whereof the cleare yerely value shal not excede. xx.li. Prouided that an office be thereof found, and a warrantie first obteyned of the sayd maister and others as is afore sayde. General lyuerye.

¶ And where such general lyuerye is sued, yf the landes excede the yearely value of. v.li. they shal pay for the Seale. xx s. iiii. d. and all other fees accustomed as afterward shal be declared. But if they excede not the yearely value of v.li they shal paye but these fees folowinge that is to saye, for the seale of the liuerye. xii. d. To the clerkes of the petye bagge for the writinge, and the inrollynge. xx. d. for the respyte of the homage, in the Hanapar eyghte pence. To ye lorde greate Chamberlayne twentye pence. To the maysters of the Rolles. xx. d. And to the clerke of the iyueries for the warraunt and inrolling of the liuerye. xx. d.

¶ Item no person or persons shal pay in the Chequer or any other courtes for the respecte of homage for any lades or hereditamétes nor exedinge the yeerlye value of. v.li. aboue. viii. d. And for the entring therof and warrant of atturney aboue. iiii. d. Respyte of homage.

¶ And the value of suche landes and hereditamentes not exceding the yearely value of. xx. pounde, shalbe taken as it is limited in the offices foundē therof except by the examinations and certificat of the sayde maysters surueyoure. atturney, a receiuour, or thre of them, as it shal

otherwise

otherwyse appeare and be declared f any of the kynges courtes.

Paine of forfeiture

¶ Also no Escheatour shall sytte onelye by vertue of his office for inquyre of the tenure title or value of any landes or other heredytamentes holden of the kyng being of the yearely value of.v.li.or aboue wythoute the kynges wryte to hym dyrected, vppon paine to forfaite v.li. for euery tyme he shal so do. Neyther shall he take for the fyndyng of any office of landes not excedyng the yerely value of.v.li.aboue.xv.s.that is to saye vi.s.viii.d.for his owne fee. And.iii.s.iiii.d.for wrytyng of the office.

Fees of an office

¶ And for the charges of the iury.iii.s.And for the officers that shall receyue the offices in any court of recorde.ii.s.vpon payne that the eschetour doyng otherwyse shal for euery time forfayte.v.li.And vpon lyke payne the officers of euery court of recorde where suche inquisitions shalbe retourned, beyng offered vnto thē wythin one moneth next after the fyndyng therof, shal receiue thē. The one moite of al whiche forfaitures to the kyng, and the other to the partye that wyl sue for the same.rc.

☞ And they which hereafter shalbe in case to sue Iyuerye, whose landes and tenementes excede not the yearly value of.v.li.may lawfully sue forth that generall Iyuery by warrant had from the sayd courtes as is aforesaid, although none other inquisition be therof had nor certyfied, payyng neuertheles the fees before remembred.

¶ Fynally euery persone shal sue forth his patent for his Iyuery wythin thre monethes nerte after the assignement of his byl, or els his byll assygned

assignes to be voyde and of none effecte.

¶ Hereafter ensueth the fees accustomed of the general Iuerpes.

¶ Fyrste to the clerkes of the petie bagge for the respecte of homage and fealtye, the wryting and inrollyng.xliii.s.ii.d. To the lorde greate Chamberlayne.xl.s. To the maylter of the rolles.iii.li. To the clerkes of the Iuerpes for wrytinge of the Indētures & obligations.xx.s. besyde counsel.

¶ The fees of the speryall Iynerye accustomed to bee payde, be these folowyng, that is to say, for the Signet.iii.li.x.s. for the pryue seale xxx.s. for the greate seale.xlii.s.viii.d. To the clerkes of the petye bagge.xl.s. To the maister of the Iuerpes clerke.xl.s. for the inrollemēt of the knowledge of thendenture.xii.s. To ye lorde great chamberlayne of Englād.xl.s. for ye writ of allowaunce for the same Iynerie.x.s.vi.d.

¶ And note ye that sometyme in especyall cases the fee be more and sometyme lesse as the case and matter doth require.

¶ Hytherto haue we breifly touched al kindes of knyghtes seruice, and thinges incident to the same. Nowe wil we with like breefnes declare thother kyndes of seruices which cōmōlye be cōprised vnder ye general name of socage. For euerye land or tenemētes eyther it is hold by knyghtes seruice, or elles it is of socage tenure, or at the least way of the nature of socage tenure whych in effecte is all one.

¶ Wherfore fyrst we shal define what socage is in the proper signification, whiche done, we shal peruse the other kindes of seruice which be the nature of Socage tenure.

Of socage.

What socage in tenure is.

Socage is properly where the tenaunte is bounde to come with his yoke, that is with his plowe to eare and so we parcel of the demeane landes of his lord which seruice in auncient time was verye common, but now by the mutual consente bothe of the lord and of the tenaunte, it is conuerted for the moste parte into a yearely rente. Howbeit ye name of socage abideth still. Where fore now all that is not knyghtes seruice is called by the name of socage.

¶ So that if a man holdeth by fealtie onely, or by fealtye & homage for al maner of seruice, it is but socage tenure, for homage alone maketh not knyghtes seruice, yea if a mâ holdeth by seruiage certaine, as I haue sayde heretofore, he holdeth in effecte but by socage.

¶ Noise where a man holdeth his landes by socage and dieth, his heyre being within ye age of xiiii. yeres, the lord shal not haue the warde but the nexte of kinne to the heire to whom the heritage caune not discende shall haue the tytle and wardshyp as well of the lande as of the heyre, tyll the heyre come to the age of xiiii. yeares, and suche tutor or gardeine is called gardeine in socage, and shal render accomptes to ye heyre of the issue and profittes that hee hathe receyued of the landes duringe suche tyme deductynge his reasonable costes and expences, so that hee shal not haue the wardeshyp to his owne vse and profyte as the Lorde whyche is gardeine in chiualry hath. And in case the gardeine in Socage dyeth before he hath made his accompte the heyre is without remedye bycause

Garden in socage.

no wryt of accompte, lieth agaynste the executours but for the kynge onelye.

¶ Fynally ye shall vnderstande that when tenaunte in forage dieth, the Lord of whome the lande is holde shal haue relyefe, that is to saye, the value of the rent that is yerely due vnto hī of the tenauncie, besyde the yerely rente, so that in effecte after the death of his tenaunte he shal haue of the heyre.ii.rentes saue that for the relyefe, he may distrayne forthwith, but for the accustomed rent he can not distrayne tyl the vsuall day of payement be come. Rente. dystresse.

¶ Franke almoygne.

Enaūt in frācke almoigne, that is to say, i free almes is where a Bishoppe, Deane, or anye other ecclesiastical personne holdeth of his Lorde in pure and perpetual almes & suche tenure begā fyrst in olde time, after this maner. Whē a man was seased in auncient time of certaine landes or tenemētes in his demeane as of fee, and of the same tenemētes enfeoffed an Abbot, and his couent or a Pryor and his couente, or anye other personne ecclesiastical, as a Deane of a Colledge, Mayster of an hospital, or suche like, to haue & to holde the same landes to them and to their successours for euer in pure & perpetual almes, or in franke almes, in these two cases the tenementes shoulde be holdē in frācke almoygne. The first foundacion of franke almoigne

¶ By force of whych tenure they that holde in frācke almoygne after this forte be bounde of

ryght before god to make orisones & prayer to celebrate masses & to doe other diuine seruices for the soules of their graunters & feoffes, and for the soules of their heires which be dead, and for the prosperous estate of theire heires ẏ bee nowe aliue. And bycause of right they be bound to this deuine seruice they bee discharged by the lawe to do anye other prophane or corporal seruice, as fealtye or suche other lyke.

Tenaunt in franke almoyne shall doe no fealtye

¶ But neuertheleſſe yf suche as holde their tenemẽtes in frãke almoygne do omit and leaue vndone these dyuine seruyces whereunto they be bound before god, the lord can not distreine them ne yet compel them by any other meanes by the course of the common lawe, but the onely remedye is to complayne of them to their ordynary who of ryght ought to compell such ecclesyastycal persones to doe the deuine seruyce due as aforesayde.

Tenaunt by dyuyne seruice.

¶ But here yee shal note that if a persone of a churche or anye other ecclesyastycall persone holdeth of hys lord by certayne deuine seruyce to bee done, as to singe masse euerye frydaye in the weke. Or placebo and dyrgye, or to finde a preyest to singe masse, or to destrybute i almes C. pence to a hundreth mẽ at such a daye, in all these cases if suche dyuine seruice be vndone, the lorde maye verye wel distraine, bycause the seruice is put here in certayne.

distresse for diuine seruice.

¶ Now we I sayde that if in olde tyme a man did enfeoffe such ecclesiastical persõ after suche sorte, he should holde hys landes in franke almoygne, but at this day it is otherwyse, for by the reason of a statute called Quia emptores terrarum. westm. in. cap. i. No man can alienne

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ne graunt landes or tenementes in fee sympie, to holde of hym selfe, so that now yf a man beyng seased of landes in fee sympie, graunte the the same by lycence to an ecclesiasticall person in francke almoigne, these wordes francke almoigne be voyde, and the ecclesyasticall person shall holde them immediatly of the lorde of the feoffer by the same seruices that the feoffer held so that no man can holde in francke almoygne but by force of a graunte made before the sayd statute, onely the kynges maiestie excepted, for he is out of the compasse of the statute.

¶ Fynallye, ye shall note that where as a man holdeth in francke almaine, his lorde is bounde by the law to acquyte hym of all maner of seruice that any other lorde can haue or demaunde out of the said landes. Wryte meane.

¶ That if he doeth not acquite hym, but suffer him to be distreyned, then he shal haue agaynst his lord a certayne writ, called a writ of meane and shal recouer against him his damages and costes of his suite.

¶ Of burgage.

A Tenure in burgage, is wher an anciẽt borough is, of whiche the kyng is lord, and the which haue tenemẽtes wthin the same borough hold the same of ye kyng paying a certayne yerely rent, which tenure, in effect is but socage tenure. Likewise it is, wher as any other lord spiritual or temporal is lord of such borough. Socage tenure.

¶ Here yee shall note that for the moosse parte, suche auncient boroughes and townes haue diuers customes and vsages which other townes Customes.

haue not. For some boroughes haue a custome that the yongest sonne shall inherite before the eldest, which customes is called cõmõly brough Englische.

Dower by custõe.

¶ Also in some boroughe by the custome the woman shal haue for her dowry al the landes & tenementes wherof her husbande was seased at any tyme during the matrimony & couerture.

Deuise by custõe of brough

¶ Moreouer in some boroughes a man maye bequeathe and deuyse his landes or tenementes by testamente at the tyme of hys deathe, and by force of suche deuise or legacye, he to whom the bequeste is made, after the deathe of the testatour whiche made such testament may by force of thys auncient custome enter into the landes so to hym bequethed or deuised without any liuery of season to him made, or further ceremony of lawe.

¶ Howbeit howe and in what maner a manne may at this day deuyse hys landes by hys laste wil & testament by force of a certayne new statute it shalbe herafter declared.

¶ Diuers other customes of Englande there be contrary to the course of the common lawe, whiche yf they be any thyng prouable and may stande with reason, are good and effectual, notwithstanding they be against the cõmon lawe.

¶ And note that no custome is allowable but suche custome as hathe be vsed by tytle of prescription or tyme out of mynde.

Of villenage or bonde seruice.

A Tenaunt in villenage is properly whē a vyllayne, that is to saye, a bondeman holdeth of his lorde, whose bondeman

he is, certayne landes or tenementes, according to the custome of the Manoure, or otherwyse at the wyll of hys Lorde, and do to hys Lorde vyllayne seruice, as for to beare and to carye the dounge of hys lordes oute of the Cytye, or out of his lordes Manour, and it is to say vpon the demene landes of his lord, or to do such lyke seruice and villayne seruice. Howe be it free men in some places holde their tenemètes, and landes of theyr lordes by custome, by such sorte of seruice, and their tenure is called, tenure in villenage, and yet they them selues be no villaines ne of seruile condiciō but fre men. For the land holden in villenage maketh not ỳ tenant a villayne, but contrary wyse a villaine may make free lande to be villaine lande vnto his lorde. As if a villayne purchaseth lande in fee symple or fee tayle, the lorde of the vyllayne maye enter into the land so purchased by his bondman, and put him & his heyres out for euer, and this done, the lord if he wil may lease the same lande to his villayne to holde of hym in vyllenge.

How sōe holde in vyllenage and be no vyllayns.

¶ And here ye shall vnderstande, that seruytute or vyllynage is the ordynaunce, not of the lawe of nature but of that lawe, which is called Ius gentium, by which a man is made subiect contrary to nature, vnto another mans dominion. For he that is a villayne or bondman, eyther he is so by tytle of prescripcion, that is to saye, he and hys auncestours haue bene villaynes tyme oute of mynde, or els he is a vyllayne by hys owne confession in courte of record, so that all villaynes eyther they be borne vyllaynes or elles they be made so: They be

Diuisio.

borne vyllaynes whē their father beyng a bond man him selfe begetteth them in lawfull wedlocke, eyther of a free woman or of a bondwoman, for so that the father be bound, the issue of him lawfully begotten must nedes be bond by the lawes of Englād, hauing no regarde to the condicion of the mother, where as in the cyuill lawe of the Romaines it is cleane cōtrary. For there, partus sequitur ventrē, that is to say, the seruytute or bondage of the mother maketh the childe bounde, and not the bondage of the father. Howbeit the bastarde sonne of a bondeman shall not be bounde, and the reason is bycause a bastard is, nullꝰ filius in the lawe, that is to say, no mans sonne.

Bastard.

¶ They be made bondemen or vyllaynes two wayes, eyther by theyr owne proper act, as whē a fee person beyng of full age, wil come into a courte of recorde, & there confesse him selfe bōde to another man.

¶ Or elles by the lawes of armes called, Jus gentium: as when a man is taken prisoner in warres, and is compelled to serue and become the thrall and bondeman of him that toke him, the law calleth such person a vyllaine, that is to saye, a slaue and thrall.

¶ And ye shall note that vyllaynes be properly called in Latyn serui, because that whē they be taken in warre, the captaines be wōt not to kyll them, but to sel them, and so to saue theyr lyues so that thei be called serui a seruādo, that is to say, of sauing. They be also called Manu cipia, a manu capiendo, bycause that they be taken by hande and power of their enemies.

Diffinicion of vyllayne.

Nowe as I sayde by the lawe of nature, we

wee are all borne free, but after that by the law of Gentilite, seruitude or bondage bydde presse and inuade the worlde, that ensued the benefytte of manumission. Manumission is quasi de maundacio, that is to say, a geuyng oute of the hande or power. For so longe as a man is in bondage and seruitute, he is subiect to the hande of power of another, and when hee is manumissed, he is made free, and deliuered, frō the sayd power, so that a manumission is nothyng els then an enfraunchisement, that is to say, a writyng testifyinge that the Lorde hathe enfraunchised his villaine and al his ofspring and sequell.

Manumission.

¶ Also yf the lord maketh to his bondemā an obligation of a certaine sum of money or graūteth to him by his dede an annuitie or yearelye pensyon, or leaseth to him by deede landes or tenementes for terme of yeres, any of these actes do implye an enfranchisement

What actes maketh manumyssiō in law.

☞ Likewyse yf the Lorde maketh a feoffemente to his vyllayne, and maketh vnto hym lyuerye of seasyn, this also is as infranchisment and secrate manumission. Briefelye to speake, where so euer the lorde compelleth his villaine by the course of the lawe, to do that thinge that he might otherwise enforce hym to doo, or to suffer wythoute the auctoryte and compulson of the law, he doeth by implication enfranchise hys vyllayne, as yf the Lorde wyll bryngе agaynste his vyllaine an action of det, an action of accompte, of couenaunt or of trespace, these & such like be in the eye of the law enfraunchysementes and manumissions, bycause that ꝑ lord in al these cases maye haue the effecte and purpose

Cause of infraūchisement.

pose of his suite (that is to saye) the goodes castels, and correction of his bondman, without ye compulsiō of that law euen by his owne pper power and auctoritie which he hath vppon his vyllayne. But if the lorde dothe sue his vyllayne by an appeale of felony, the villayne beynge lawfully endited of the same before this is no tacite manumission or infraunchisement for the Lorde thoughe he haue power to beate his villayne and to spoyle him of his goodes, yet he cā not by the law of this realme put him to death.

¶ ye shall also vnderstande, that yf a mannes bondeman purchased landes or acquite and get vnto him any other thyng, the lorde may forthwith enter and cease the same into hys owne handes. Wherfore yf the lorde wyl bringe agaynste hys vyllayne a precipe quod reddat, by whiche he demaundeth against his villaine any landes or tenementes, this implyeth an infranchisement, forasmuche as he byndeth him selfe to the prescript and auctoritie of the law where as he might vse his owne auctoritie, by entring and sealyng the sayd landes.

Diuision

¶ Fynally ye shal marke that some villaynes be called vyllaynes in grosse, and other some be called vyllaynes regardaunt. In grosse be they of whyche the Lord is seueral seased, and not by reason of any lordeshippe, or maner but they be called regardant, whiche do belonge to a manour, or whiche the Lorde is seased, and the sayde vyllaynes haue bene regardaunt, that is to saye, erspectant and attendaunt tyme oute of mynde to the Lorde of the sayd Manour in doynge vnto hym suche seruyces as to a vyl-

Villeyne in grosse.

Villayne regardāt.

lame appertayneth.

¶ Of auncient demene.

There is also a certaine kynde of tenure whiche is called auncièt demene, & that tenauntes which holde by thys seruyce, be free holders, & by charter & not by copye or courte rolle, or by the verge after the custome of the manour at the wil of the lord. And these tenauntes be suche as holde of those Manours which were sainct Edwardes the kynge or whiche were in the handes of king Willyã the conquerer, and these Manours be called the auncient demesnes of ỳ kyng or the aũcient demesnes of the crowne of Englande. And to such tenauntes which hold of such manours be many and dyuers lyberties geuen and graũted by the lawe, as to be quyte of rolle & passage, & suche like impositions which be demaunded of men for their goodes & catels sould or boughte in fayres and markets by them also to be quit and free of taxe and talage graunted by parlyament, except that the kynges maiestie do taxe auncient demene (as to hym only appertemeth) when he thynketh good for greate and vrgente considerations. Tenauntes also of auncient demeane ought to be quite of paimẽtes to the expences and charges of the knightes which come to the parlyament, also they ought not to be impanelled nor put in iuryes and inquestes in the country out of their manour or seignory of aũcient demeane for the landes whiche they holde of suche manours, onles they haue other lãdes at the common law, for which they ought to be charged. And yf suche tenauntes or any of the

whiche

which holde of the Manoure of auncienté demeane, be distrained to do vnto their lord other seruices or customes then they or their auncestours haue vsed to do, then may they sue a certayne writ called Monstrauerunt directed to ye lord, cõmaundyng him that he distrayne them not for to do other seruices or customes then they haue bene accustomed to do.

Writ of monstrauerunt.

¶ And for further knowledge herof ye shal vnderstande that in the Eschetour there is a boke called Domesday, which boke was made in the tyme of the said saint Edwarde. And all the landes which were in the seasin and in the handes of the sayd sainte Edwarde at the tyme of the makynge of the sayd booke be auncient demeane. But the landes which then wer in other mens handes though they be written in ye sayde boke, be franke fee and no auncient demeane.

franke fee.

¶ Finallye it is to be noted, that tenauntes of aũciẽt demeane shal not be impleaded for their sayd landes out of the manour wherof they so holde, and yf they be, they maye shewe the matter and abate the writte. But yf they ones answere to the writte, and iudgement gyuen, then the landes haue lost the nature and benefite of auncient demeane, and are become frãke fee, that is to saye, pleadable at the commõ law for euermore. And thus haue we spoken of the diuersitie of tenures.

Abatemẽt of ye writ.

¶ Of rentes.

For asmuche as vppon euerie tenure there is cõmonly reserued one rent or other therfore I thinke it good somwhat to trate of rentes. But ye must vnderstãd that there

be

be fundrye sortes of rentes. There is one kinde of rent whyche is called rent seruice. An other whiche is called charge, and the thyrde whyche is named in frenche rent serke, that is to say in Latyn redditus siccus, a drye rent. Now rente seruise is so called bycause it is knytte to ỳ tenure and is as it were a seruice wherby a man holdeth his landes or tenementes, or at ỳ leaste waye whē the rētes vnseuerably coupled & knit with the seruice, as for an example, where the tenaunt holdeth his lande of the king or of any other lorde by fealtie and by certayne rēt or by homage, fealtie and certayne rent, or by any other sortes of seruices and by certayne rent, this rent is called rent seruice. And here ye shal note that if this rent seruice be at any time when it ought to be payde, behynde and vnpayde, the Lord of whome the land or tenement is to holden, whether it be in fee simple, fee tayle for terme of life, for yeares or at wil, may of common ryghte enter and distraine for the rente, thoughe there be no mencion at al, ne cause of dystresse put in the dede or lease. I saide before that the nature of this rent seruice is to be coupled and knitte to the tenure. For where no tenure is, there can be no rente seruice. And therfore if at this daye I be seaised of landes of fee simple, and make a dede of feoffemente of the same to an other in fee simple reseruing by the same dede a rent, this can be called no rent seruice, bycause there can be nowe no tenure betwene the feoffour and the feoffee. Otherwyse it is of feoffmentes in fee simple, made before the statute of Westmēster the third. Cap. 1. called Quia emptoribus terrarū. For before ỳ making

Diuision of rente seruice.

distresse of common ryght.

kynge of that statute, if a man had made a feoffement in fee simple, reseruinge to hym a certayne rent, yet though it had bene without dede here had bene begonne & created a newe tenure betwene the feffour and the feffee, and ỳ feffee shoulde haue holden of the feffour, who by vertue of the same might of commō right haue distrained for such rent. But at this day by force of the sayde acte, there can be no such holdinge or tenure created or begonne, and consequētly no rent seruice canne bee at this daye reserued vppon any gyft in fee simple, excepte it be ỉ the kinges case, who being chiefe lorde of all, euer myght and may geue lādes to be holdē of him. Thus ye see, that at this day, no subiecte cā reserue any rent seruice vnto him onlesse the reuertion of the landes or tenemētes that he shal graunt, be stil in him, as where he graunteth thē in fee tayle, or maketh but a lease for terme of life, or for certayne yeres, or elles at wyll. For in at these cases the reuercion of the fee simple remayneth still in him, and therfore if here be any rent reserued, it is to be called a rēt seruice, & it is of cōmō righte distrainable though there be no clause of distresse in the dede of feoffement or lease.

¶ But here ye will aske me, when in the case before remembred, a man at this daye geuethe cleane awaye the lande or tenement from him selfe in fee symple, so that there is no maner of reuercion of the same remayning in him at al, and yet neuertheleſſe reserueth vnto hi by his dede a certayne rent: what maner rent shal this be called? I answere, if there be in the dede indented any clause of distresse, that is, that if the

rent

rente be behynde vnpayed, it shalbe laweful for the feffour to enter and to distrayne, it is called a rent charge, forasmuch as the lande is charged therwith, but howe of common ryght, no, but onely by vertue and force of the wrytinge. Rente charge.
But on the other side, if there be no such clause of distresse put in the indenture, then the rēt so reserued shalbe called a rent secke. Rente secke.
¶ Lykewyse if a maine that is seased of certayne landes, wyl graunte eyther by indenture or by his dede polle, that is to saye, single: not indented, a yerely rent out of the same lādes to another whether it bee in fee simple, fee tayle, for terme of lyfe, for yeres, or at will, w̄ clause of distresse, then this rent is called a rēt charge and he to whom such rent is graunted may for defaute of paymēt therof, enter and distrayne. But contrarely if the graunt be made without any such clause of distresse, it is called rēt secke, that is to saye, a drye rente, bycause he can not come to it in case it bee denyed, by waye of distresse in so muche that if he were neuer seased of it, he is by the course of the commō lawe w̄out remedye. Otherwise it is of a rent charge for here he to whome the graunte is made whē the rent is behinde, may chose whether he wyl sue a wryt of annuitie aganste the grauntoure or distraine for the rent behind, and retaine the distresse tyl time he be payed accordingly. But he canne not haue bothe remedies together but muste take him to the one, for if he ones recouer by a wryt of annuitie, thē is the lande discharged. And if he sue not his wryte of annuitie, but distrayne for the arcrages, and the tenaunt sueth a repleuin, where oppō the other Annuitye
Repleuin
auoweth

knoweth the takynge of the dystresse in courte of recorde: then is the lande charged and the person of the grauntoure discharged of the action of annuitie.

Estoppel ¶ ye shal also vnderstande that yf a man wyll that an other shal haue a rent charge comming out of his lande, and yet wil not that his person shall by any meanes charged by writ of annuite, he may then haue such clause in the ende of his dede. Prouiso et presens scriptum, nec quicquam in eo contētum vllo pacto se excēdat ad onerandam personam meam p breue seu actionem de annuitate, sed tantum modo valeat ad onerandū terras, fundos et tenemēta mea de annuo redditu predicto. If this or suche like cause be added, then the lande is charged and the person of the grauntour is discharged.

prouiso.

¶ Also yf a man wil make a dede of graunte in this wise, that if John at Stile be not yeare ly paide at the feaste of Christmas for terme of his life xx. shylinges sterling, that then it shalle lawful for the saide John at Stile to distraine for it in the Manour of Dale, this is a good rent charge because the Manoure is charged with the rent by the waye of distresse, & yet neuertheles in this case the person of hym ỳ made such dede is discharged of any actiō of annuite forasmuch as he graunted not by his dede any annuite to the sayde John at Stile but onely graūted, ỳ he might distraie for such yerely rēt.

¶ Furthermore yee shall note, that yf a man hathe rente charge to him & to hys heyres commynge oute of certayne landes, and dothe purchase any parcell of this landes to hym and to his heyres, in this case the hole rent charge is

quenched

quenched and gone, and the annuitye, also the cause is this, that a rente charge can not be in suche case appoꝛcioned. Otherwise it is of a rente seruyce, as foꝛ example yf one which hath a rente seruyce of xx.ō. by yeare dothe purchase parcell of the lande out of whyche this yearelye rent of xx.ō. is commynge, this shal not extynguyshe oꝛ dꝛowne the hole rent, but foꝛ that parcel onelye. Foꝛ rente seruyce in such case maye verye well bee appoꝛcioned and rated accoꝛdynge to the value of the lande. yet there be soꝛtes of rentes seruyces, whych in no wyse can bee appoꝛcyoned. And where a tenaunt holdeth his lande of hys loꝛde by the seruyce, to render to his loꝛde yearly at suche a feaste, an hoꝛse, a rynge of golde, a redde rose, a gylpuer oꝛ suche lyke, yf in this case the loꝛde doth purchase parcel of the lande thus of hym holden, this seruyce is gone, bycause suche seruice, cā not be seuered and appoꝛcioned. All escuage is a seruice that may verye wel be appoꝛcioned accoꝛdynge to the afferaunce and rate of the lande.

Extenguisment

rente seruyce can not be appoꝛcioned.

¶ But where anye land is holden by homage and fealtye, yf the loꝛde purchaseth parcell of the lande, yet he shall haue his homage and fealtye styl of his tenaunt.

¶ ye shall marke also, that yf a man maketh a lease of landes to another foꝛ terme of lyfe, reseruing to hym certayne rente, yf in this case he graunteth that rente to John at Style sayynge to hym selfe the reuersyon of the sayde land, this rent is but rente secke, because John at Style that hathe the rente, hath nothynge in reuersyon of the lande.

But yf he graunteth, the reuersyon of the lande

Atturnement.

to John at Noke for the terme of lyke, and the tenaunte atturneth accordynglye, then hathe John at Noke the rent as rent seruice bicause he hath the reuersion for terme of lyke.

Rente is incidente to a reuersion.

¶ Lykewyse it is, yf a man geueth landes or tenementes in tayle, reseruynge to him and to his heyres certayne rente, or maketh a lease of the land for terme of lyke, reseruinge certayne rente yf he graunteth the reuersion to another, and the tenaunt atturneth accordingly, the hole rente and seruice shall passe by this woorde reuersion bycause the rente and seruice in suche case be incydent to the reuersiō, & doe passe by the graunt of the reuersiō. But if he had graūted the rent onely, the reuersiō had not passed.

☞ What remedye a man hath to recouer his rent when it is behynde.

I Shewed you before, that for a rente seruice yf it bee behynde, ye maye distrayne in the ground euen of common ryght thoughe there be no suche clause of distresse mencioned in the dede of feoffement, graunte or lease. Also for a rente charge yee maye distrayne or bryng your wryte of annuitye at your choyse and election as before is declared. But of a rente secke if ye were neuer seised of it nor of anypar cel therof, ye be without remedye by course of the common lawe, for ye can not dystraine for it, nor yet bryg your wryt of annuitie but if ye were ones seysed of it or of parcel therof, & it is ertsones behinde, then your remedy shalbe thy.

ye

ye muste goe eyther by your selfe or by your debtye to the lande or tenement out of which the rent is comming, and there demaunde the arrerages of the rent, whych yf the tenaunte denye to paye this denyal is disseisin of the rent. Also if the tenaunt be not then readie to paye it, this counteruayleth a denyal, whiche is a dysseysin. Moreouer if neyther the tenaunte nor none other man be remayning vpon the grounde to paye the rent, when yee demaunde the arrerages, this also is a denyall in the lawe, and is in verye deede a disseisin. And of these dysseisines ye may haue an assyse of nouel disseisin agaynste the tenaunt, and shal recouer seisin of the rent and the arrerages & your damages and costes of your wrytte and of your plee. And yf after such recouerie and execution had, the rent be agayne at another tyme denied you, then ye maye haue redisseisin and shall recouer youre double damages. &c.

Disseisin of rents seelke.

Assyse.

In redisseisi double damages.

¶ It shalbe therfore wysedome for a man when a rente is graunted by anye persone vnto hym to take of the tenaunt of the lande a pennye or an halfe penny in name of seisin of the rent, and then yf at ye next daye of payment the rent be denyed hi, he may haue an assyse of nouel disseisi

¶ And yee shal note, that there be thre causes of disseisyn of rent seruice, that is to wete rescouse, repleuin, and incloser. Rescouse as whe the lorde vpon the lande holden of him dystraneth for his rent behynde, and the distresse bee rescoued from him, or yf the lord come vpō the lande and wil dystrayne, and the tenaūt or any other man for him wil not suffre hym, this is called Rescous.

thre causes of disseysyn of rent seruice.

Rescous.

enclofer.

¶ Repleuin is, when the lorde hath distrained and repleuin is made of the distres by writ or by plaint. Enclofer is where lādes or tenementes be so enclofed that the lorde can not cōe wīn the landes or tenementes for to dystraine. And the chieke cause why suche thinges so made by disseisin to the lorde is for as much as the lorde is by this waye disturbed of the meane and remedie wherby he ought to come and haue his rent that is to wete, by distres.

Foure causes of disseisin of rente charge.

¶ And there be foure causes of disseisin of a rent charge, that is to wete, rescous, repleuin, enclofer, and denyer. For denier or denial is as wel a disseisi of a rēt charge as it is of rēt seck.

¶ Fynally ye shall vnderstande, that there be two causes of disseisin of a rent secke, that is denyal and enclofer.

And two of rente secke.

¶ And it semeth that there is yet another cause of disseisin of all the thre rentes afore sayde, that is to wete this, when the lorde commeth to the land holden of him, or when he that hath a rent charge or a rent secke commeth to ye lāde to distraine for the rent behinde, & the tenaunte hearinge this, encontreth him, and forstalleth hym the waye with force and armes and manaseth him in suche sorte as he dare not come to the ground for to distrayne for his rent behynde for feare of death or mutilation of hys membres: this is a disseisin bycause the partye is disturbed of his man and lawefull remedye wherby he ought to come to his rent.

One other cause of disseisi

Acte of parlyament.

¶ Fynally ye shal obserue and marke, ye by an acte of parliament made in the. xxii. yere of our souerayne lorde kynge Henrye the eighte, it is lawefull for the executours and administra-

Executours.

tours

tours of tenauntes in fee simple, tenauntes i fe tayle, tenauntes for terme of life, of rēt seruices rent charge, rent seckes, and of fee fermes, for arrerages of such rentes as were due vnto their testatours in their liues, either to distraine for the same, or at their election to bringe an actiō of det, except in suche lordshyp in Wales or in the marches therof, where as the tenaūtes haue vsed tyme out of mynde to pay vnto euery lord at his fyrste entrye into the lordshyp any sūme of money for the redēption of al maner of duties and penalties incurred at any time before their lordes entrye.

Distres of acciōs of dette.

¶ Also by force of the sayd act ye husbāde which was seised in the right of his wife, maye after the death of his wife, either distraine or bringe an action of det for the arrerages of such rētes as were due and vnpayed in her lyfe.

¶ Likewise it is of him that hathe a rente for terme of another mannes life, if he for terme of whose life he hath the rent dieth, yet by vertue of the sayd acte he or his executours & administratours may, either distrayne or bryng an actiō of det for the arrerages due before ye deathe of him for terme of whose life he had the rent.

¶ Howe auowryes ought to be made of rentes and seruice, enacted Anno. xxi. Henrici. viii.

VWhere any landes be holden of any person by rentes, customes, or seruyces, yt the lorde distrayne vpon the same lādes for anye suche rentes, customes or seruices, and replevin therof be shewed, ye lorde

may auowe, or his baylife or seruaunte maye make conisaunce or iustifie the taking vpō the same landes, as within his fee and seygnourye alledginge in the sayd auoury conisance or iustification the same landes to be holdē of hym, without naming any person certayne to be tenaunt of the same, and without makynge anye auowrye, iustification, or conisaunce vpon anye person certayne. And likewyse vppon euerye writte sued of the second deliueraūce. And they that make anye suche auowrye, iustification or conisaunce, yf the same auowrye, conisaunte of iustification be founde for them, or the plaintif be nonesuite or otherwise barred, then they shal recouer their hole damages and costes.

Seconde deliueräce

damages.

¶ Also the sayde plaintifes & defendantes shall haue lyke plees and one aide prayers (plees of disclaymer onely excepte) as they myghte haue had before the makynge of thys acte.

¶ Also suche persons as by the cōmon law may ioyne to the plaintife or defendaunt in the sayd wryttes of Replegiare or seconde deliueräce as well without processe as by processe shall from henceforth, also in thys case ioyne vnto thē aswel without processe as by processe, & haue like plees and like auantages in al thinges (disclaimer onely except) as they might haue by the cōmon lawe before this acte.

Plees in auowrye.

¶ An acte for the assurauce of fermours made. An. xxxiii. Hen. viii. ca. 28.

ALl leases herafter to be made of any lādes or other hereditamētes by writing indēted vnder seale for terme of yeres or for terme of life by any pſōs beyng of the

of the age of.xxi.yeres hauyng any state of inhe
ritaunce eyther in fee simple, or in fee tayle in
theyr owne righte, or in the right of their chur-
ches or wiues, or ioyntly with their wiues shal
be good and effectual against the lessours theyr
wyues, heires, and successours accordyng to the
estate comprised in suche indenture of lease.

¶ Prouyded that this acte shall neyther exted
to anye leases to be made of anye landes heredi
tamentes beynge in the hãdes of any fermours
by vertue of any olde lease onlesse the same old
lease be expired, surrendred, or ended within
one yeare after the makynge of the newe lease,
nor yet to any graunt to be made of the reuer-
syon of any landes or hereditamentes, nor to
any lease of suche landes or hereditamentes as
haue not commonly bene letten to ferme by the
space of.xx.yeares next before such lease therof
made nor to any lease to be made without im-
peachement of wast, nor to any lease to be made
aboue the number of.xxi.yeares or the liues as
the most from the day of making thereof. And
that vpon such lease be reserued yerely duryng
the same, due and payeable to the leasours their
heires and successours to whom the lãdes shuld
haue come after the deathe of the leassours, and
to whom the reuersion therof shal pertaine ac-
cordyng to their estates and interestes, so much
yearely rẽt or more, as hath bene accustomably
yeldynge for the same, within.xx.yeres next be-
fore such leases, and that he to whom the reuer
sion therof shal pertayne after the death of such
lessours or other heires: shall haue suche lyke
remedy and aduauntage against the fermours
thereof their executours and assygnes, as the

Surren-
der of the
olde lease.

The wife shall be partie to the lease.

lessour hym selfe should haue had.

¶ Prouyded also that the wyfe be made partye to euery such lease as shall be made by her husbande of any landes beynge the inheritaunce of the wife, and that euery suche lease be made by indenture in the name of the husbande and his wyfe, and she to seale therunto. And that the rent be reserued to the husbãde and wife & to ye heyres of the wife accordyng to her state of inheritaunce therin. And that the husband shal in no wise aliene discharge, graũt, geue away the same rent serued nor any part therof lõger thẽ during the couerture, without it be by fine leuied by the sayd husbande and wife.

¶ Prouided furthermore that this acte extẽde not to geue libertye or power to anye persons to take any mo fermes, leasses, or takig of any landes or other hereditamentes, thẽ they might haue done before the makyng of this acte, nor yet extende to geue any libertye to anye person or vycare of anye churche, or vycarage, for to make anye lease or graunte of anye of theyr messuages, landes, tenementes, tythes, profytes, or heredytamentes belongynge to theyr churches or vicarages otherwise thẽ they might haue done before the makyng herof. Anno. xxxii Henricy. viii.

What graunt by a corporation is good.

¶ It is furthermore enacted that the graunte lese, or gift, or electiõ of the gouernour, or ruler of any hospitall, colledge deanry or other corporation with the assent of the more part of suche of the same as haue voyce, therunto shall bee good and effectuall, anye rule or statute made by anye foundoure to the contrarye notwithstandynge.

h. 8. ca. 27.

Of

¶ Of falsyfiynge of recouerypes by fermours enacted. Anno. xxi. H. viii.

A L fermours or leses for terme of yeres may falsyfie for their terme onely recouerypes had by fained titles, as well as a tenaunt in freehold. And the same fermours, theyr executours and assignes shall enioye theyr sayde termes accordynge to their leases, against suche recouerypes euen as yf none suche had be suffered. In whiche case neuerthe lesse the recouerer, after such recouery had, shal haue like remedy against ꝑ fermours, by auouerie, or action of dette for rentes and seruices reserued vpon the same lessees beynge due afore the same recouerypes, and lyke actions for wast done after the same recouerypes, as the lessours mighte haue had yf no suche recouerye had be had. Furthermore no statute stapie statute marchaunt, nor executiõ by Elegit shal be auoyded by any suche feyned recouerypes, but lyke remedie, shall be had to auoyde and falsyfie the sayd recouerypes, as is ordeyned for the fermoure or lesse for terme of yeares.

Auowry or action of dette.

¶ Of tythes, and howe they shall be recouered, enacted. An. xxxiii. Henrici. viii.

A L persons shall truely pay their tythes and offrynges accordyng to the lawful customes and vsages of parisshes, and places where suche tythes or dutyes be due. And yf they doe wyllfully witholde anye parcell of theym: the partye wheither he bee ecclesiastical

clesiastical or lay that should haue them, maye conuent suche personnes before the ordinary his commissary or other cōpetent minister or iudge of the place where such wrong shall be done accordyng to the ecclesiastical lawes. And in euery such cause of suit the same ordinary or iudge hauing the partyes or theyr procuratour before hym, shall procede to the determination thereof ordinarily or summarily according to ye course of the sayd lawes, and theruppon shal geue sentence accordynge.

¶ And in case any of the parties of any matter concernynge that suite, do appeale frō the sentence, and diffinitiue iudgemente of the sayde Iudge, then the same iudge forthwith vpon appellation made, shall adiudge to the other party the reasonable costes of his suite, and shal compell the same partie appellaunt to pay the same by compulsary processe sensure of ye said lawes takinge suertie of the other partye, to whome suche costes shall be adiudged to restore ye same to the appellaunt, yf afterwarde, the principall cause of that suite of appeale shall be adiudged agaynste him. And so euery iudge ecclesiasticall shall iudge costes to the other partye vppon euery appeale to bee made in anye suite or cause of subtraction or detention of any tithes or offering or in any other suite to be made concernynge the duties of suche tythes or offerynges. And if any personnes after suche sentence geuē againste them, shall obstynately refuse to paye their tythes or duties, or sach sūmes of money so adiudged wherin they be condempned, they twoo Iustices of the peace of the same shyre, whereof one to be of the Quorum, shall vpon

Suertye.

certify

certifycat or complaynt to them made in wrytynge by the iudge that gaue the sentence, cause them to be attached and commytted to the next iale, there to remayne without bayle or maynprise, tyll they shall haue founde sufficient sueties to be bounde by recognysaunce, or other wise before the same iustices to the kynges vse for the performaunce of the sayd iudgement.

¶ Prouided, that no personne shall be sued or otherwyse compelled to paye any tithes for any landes tenementes or heredytamentes whiche by ye lawes of this realme are discharged or not chargeable w̄ the payment of any suche tythes.

¶ Also this acte shal in no wise bynde the inhabitauntes of London & suburbes of ye same to paye theyr tithes and offeringes within the same cytyes and suburbes otherwise then they should haue done before.

¶ Furthermore yf any hauyng an inheritance freholde, terme or intrest in anye personage, vicarage, porcion, pencion, tithes, oblacyōs, or other ecclesiastical profite made, or to be made tēporal, or admitted to be in tēporal hādes by ye lawes or statutes of this realme, be disseised or otherwise put fro the same by any other person clayminge to haue interest therin, the person so dysseised, or wrongefullye put from hys sayde ryghte or possessyon his heires, wife, and other to whome suche wrong shal be done, may haue remedye in the kynges temporal courtes, as the case shal require for the recouery therof by writtes original of Præc. qd reddat aff. of nouel disseision. Mortdanc. Quod ei deforciat, writtes of dower or other writtes original to be graunted in the chaunceryе of euerye suche personage

vicarage

vycarage, portion, pension, or other profyte ecclesyastical according to the nature of the suyte therof. And writtes of couenaũt & other writtes for fynes to be leuied, & all other assurancies to be made of any such personage or profitte ecclesiastical shalbe deuised and graũted there, lyke as hath bene vsed for fynes to be leuied and assuraunce to be had of landes or other hereditamentes, & al iudgementes geuẽ vpõ suche writtes original graũted for any the premisses and al fines leuied and knowleged in any of ye kynges said courtes therof, shalbe of lyke force as iudgement geuẽ and fynes leuyed of landes tenementes and hereditamentes.

¶ Of mortuaryes enacted, An. xxi. H. viii.

NO person spirituall their fermours nor baylliffes shall cal any person before any iudge spiritual for the recouery of anye Mortuaries more thẽ is hereafter mentioned vpon paine to forfetie for euery time to muche in value as they shal take aboue ye sũme here limitted and ouer ye. xl. s. to ye party greued for which he shall haue an action of det, by writ byl, or information, wherin no wager of lawe essoyne nor protection shalbe alowed. First no mortuarye shalbe taken of anye whyche at hys deathe hath in mouable goodes vnder the value of. x. marcke. And no mortuarye shalbe taken but onelye where mortuaryes haue bene vsed to be paied, and there after the forme here after mentioned. Nor in no moo places but one that is to wyt, there where his most abidig is, and there but one. Nor no person shall take

for

for a mortuarye of anye persone beinge at his death at the value of ten markes aboue his dettes payde, & vnder, xxx li. aboue. iii. s. iii. d. And of the value of. xxx. li. and vnder. xl. not aboue vi. s. viii. d. And of the value of. xl. or aboue if any summe whatsoeuer it be, not aboue. x. s.
Also no mortuarye shal be asked nor payde for any woman couert baro, or childe or any perso not keping house, or for any waykarig mã, but the Mortuaries of suche waykarynge men bee answerable in that place where they had theyr moste dwelling at the tyme of their death.
¶ Neuertheles such spiritual person may take anye thinge, whyche shall be disposed or bequethed to him or to the hyghe aulter of the church Also nothing shal be taken for Mortuarye in Wales nor the marches of the same, nor in Calis or Berwicke or the marches of the same, but ouelye in suche places of the same, where Mortuaryes haue bene accustomed to be payde and there but onely after the fourme aboue specified. Prouided that the bysshoppes of Bãger, Landake, saint Dauides, and saint Asse & the archedekẽ of Chester may take such mortuaries of the priestes wythin their diosices and iurysdictions, as here to fore haue bene accustomed. Prouided also that in suche places where mortuaries haue bene accustomed to bee taken of lesse value, none shal be compelled to paye anye other mortuarye or more for anye Mortuarye then hath bene accustomed, nor no Mortuarye there shal be demaũded of any person exempte by this acte vpon payne afore rynytted.

Of dyscontinuaunce.

It is

It is called a discontinuaunce by the lawes of Englād, whē he that hath the possessiō of landes or tenementes for the time present and yet not hauing the fee simple in hym selfe nor i hys owne ryghte onely, maketh an alienatiō of the same to an other, by reason wherof, he that shoulde haue them after him and whyche then hath righte vnto them can not entre, but is driuen to his remedye by waye of accyon in suche wyse that the sayde landes be not vtterlye shyfted and gone from such persone or persons as haue ryght vnto them, but be alonelye discontinued for a tyme, tyl the persone whyche after the death of such discontinuer hathe righte vnto them, do recontinue and bryngе them home agayne not by entre but by sute and waye of accion. As for example, yf tenaunt in tayle of certayne landes doeth enfeoffe an other in the same, in fee symple or fee tayle hathe issue and dyeth, hys issue can not entre into the landes though he hathe tytle and ryghte vnto them, but is put to his accyon, whyche is called a formedone in the descender. And yf such tenaunte entayle which maketh suche a feoffement, hathe no issue at tyme of his deathe, it is yet neuerthelesse a discontinuaunce to him whyche is eyther in the reuersion or in the remainder so that neither the one nor the other can entre, but be driuen to their accion, he in the reuersion to hys formedon in the reuerter, and he in the remainder to his formedone in the remainder.

Formedon i the discendre

Formedon i the reuerter or remainder.

¶ In lyke maner yf a bysshoppe doeth alien lādes whicy be parcel of hys bisshopryche and dieth

this is a discontinuaunce to his successour for as muche as he can not enter, but is driuē to his writ of entre sine assensu capituli.

Entre sine assēsu capituli.

¶ Semblablye, if a Deane be sole seased of lādes as ī the ryght of his Deanery, and maketh suche an alienation, this is a discontinuance to his successour. Also yf the master of an hospitall alieneth anye landes of his hospital, this is a discontinuaunce and his successoure can not enter, but is put to his wryt. De ingressu sine assensu confratrum et sororum.

ingressu sine assensu confratrum et sororum.

¶ But yf a persone or a vicare of a church wil alien anye of his glebe landes to an other ī fee simple or fee taile, and dyeth or resigneth hys benefice, this is no discontinuance to his successour, but he maye verye well enter, notwithstādyng such alienation made by his prōdecessour And the highest wrytte that a person cā haue, if his predecessour hath aliened his glebe lād or lost it by defaulte or reddiciones is a Juris utrū.

Juris utrum

¶ And furthermore note that no tenaunt, if the lande can by hys or their acte discontinue the right of hi in the reuersyō onles it be by a feoffemēt with liuerye and season or els by a reles with warraunte.

☞ And note that suche thinges as passeth by waye of graūt by dede without liuerie and season can not be discontinued as auouson common or vyllayne ingrosse, reuersion, rēt charge common for beastes terten and such other like.

¶ Also yee shal vnderstande, that in the. xxxii. yere of this kinges most noble reigne, it is inacted ꝑ no fee feoffemēt or other acte to be made or suffred by the husbād onely, of any lādes or tenemētes being ꝑ inheritaunce of fre holde of

his

hys wife duryng the couerture betwene them shall be anye discontinuance therof or be preiudicial or hurtful to the sayd wife or to her heyres, or to suche as shall haue ryght tytle or interest to the same by the deathe of suche wife but that the same wife and her heyres, and suche other to whome such ryght shall appertayne after her decesse may then lawfully enter into al suche landes and tenementes according to their rygh̃tes and tytles therein.

¶ Howe recoueries by colusyon against tenauntes for terme of lyfe is no discontinuance inacted. An. xxxii. H. viii.

Here diuerse persons seased of lãdes & hereditamentes, as tenauntes by the curtesye of Englande, or otherwise onelye for terme of life or liues haue here tofore suffered other personnes by agrement or couyne betwene thẽ had, to recouer ẏ same against thẽ i the kiges court by realõ wherof, they to whõe ẏ reuersion or remainder thereof hath belõged, haue after ẏ deathes of suche tenaũtes be driuẽ to theyr actiõs for ẏ recõtinuaũce & obtaynynge of ẏ sayde landes and tenementes so recouered, and sometyme haue bene clearely dysherited of ẏ same, it is enacted that all suche recoueries hereafter to be had by agrement of the partye or by couin, agaynste anye suche particular tenaunte of landes or heredytamentes, wherof he is or hereafter shalbe seased, as tenaunt by the curtesye of England, tenaunt in tayle after possibilitye of issue extinct

or otherwise for terme of life shal frō hēcefoyth as against such persons to whome the reuersiō or remaynder shal thē appartayne and against theyr heyres and successours, be clearely voyde. ¶ Prouided that this acte extēde not anye person that shall by good tytle recouer anye hereditamentes withoute fraude or couyn agaynst any such perticuler tenaūt by reasō of any former ryght or tytle, nor yet to auoyde any recouery to be had agaynst any such perticuler tenaunte by the assent and agremēt of those in ye reuersion or remayndre, so ye such assent & agrement do appeare of record in the kinges court.

¶ Howe wrongfull disseisin is no discente in the lawe, enacted. Anno. xxxii. Henrici viii. Capi. xxxiii.

Where diuers persones haue by strēgth and without tytle entered into landes and tenementes, and wrongfullye dysseised & dispossessed the rightful owners & possessours therof, and so being seased by disseisyn haue thereof dyed seased by reason of which dying seased, ye parties that were so dysseised and dispossessed, or such other persons as before such discent myght haue lawefullye entred into the sayd landes & tenemētes, be thereby clerelye excluded of theyr entre into ye same and put theyr action for theyr remedie and recouery therī it is enacted, that the dyinge seised hereafter of anye suche disseisoure hauinge no ryght or tytle therin, shall not be demed anye suche discent in the lawe to take away the entre of such persones or theyr heires whyche at the tyme of the same discēt had good tytle of entre

into the same. Except that such disseisour hathe had the peasible possession of his landes or tenementes wherof he shall so die seased by the space of fiue yeares next after the disseasin by him cõmitted without entre or cõtinual claime by suche as haue laweful title therunto.

¶ The limitacion of prescription inacted. An. xxxii. H. viii.

NO persõ shal sue or maitaine anye writ of ryght, or make anye title or clayme to any landes, tenemẽtes, rẽtes, annuities, cõmõs, pensiõs, portiõs, corrodies or other hereditamentes of the possession of his auncestour or predecessour and declare any further seisin or possession of his aũcestour or predecessour but onely of the seisin or possession of his auncestour or predecessour, which hath bene seised of the same within. xl. yeres nexte before the feaste of the same wrytte, or next before the sayde tytle or clayme so to be sued.

Limitacion of xl. yeares

¶ Also none shal sue or maintaine anye assyse of Mortdãcestour, conysage, ayle, wryt of entre vpõ disseisin done to anye his auncestours or predecessours, or any other action possessarye vpon the possession of any of his aũcestours or predecessours, for landes or heredytamẽtes of further seisin or possession of thẽ, but onely his seisin or possession whyche was seised therof within fyftye yeares nexte before the feste of ye original of the same writ. And none shal maintayne action for landes or other heredytamentes vpõ his owne seisin or possession therin, aboue. xxx. yeres nexte before the feaste of the original of the same wrytte.

Limitacion of. l. yeares.

Limitacion of xxx. yeares.

Item

¶ Item none shall make any auowrye or conysaunce for a rente, sute, or seruice, and alledge any seasin of the same i his auowry or conysaunce in possession of his aūcestors or predecessours, or in his owne possessyon, or in the possessiō of any other whose estate he shal claim to haue abcue fyftye yeares nexte before the makinge of the sayde auowrye or conisaunce. Moreouer all formedones in reuerter, formedones in remainder, & Scire facias vpō fines of landes or other hereditamentes to bee sued, shalbe taken within fiftye yeares next after the tytle of actiō fallē. And if anye do sue any of ꝑ sayde actions or writes for lādes or other hereditamentes or make any auowrie conisāce prescription or clayme for any rente, sute seruice or other hereditamentes, and cā not prouе that he or his auncestours or predecessours were in actual possession or season therin at any tyme within the yeres before lymyted, if the same be trauersed or denied by the partie playntife demaundant or auowant or by the party tenaūt or defendaunt, he and his heires shal from hēce forth be vtterly barred for euer of euery ꝑ said wryte, actions, auowrye, conisaunce prescription, title, & clayme hereafter to be sued or made for the same landes or other the premisses, for whyche such action wryt auowrye, conisaūce title or clayme hereafter shalbe sued or made. Barre.

¶ Prouided, that all persones whyche nowe haue any of the said actiōs, wryttes, auowries, Scire facias, conisaunce, prescription tytle, or clayme dependyng, or that hereafter shall sewe or bryngе any of the sayde wryttes, or actions, or make any of the said auowries, conisaūces,

whether state shal take effecte.

prescription, tytles, or clayme at anye tyme before the feast of the assencion of our lord which shalbe in the yeare of our lord a thousand fyue hundreth forty and syxe, shal alledge the season of theyr auncestours or predecessours, or theyr owne possessyō and season, & also haue al other lyke auauntage in the same wryties, actions, auowryes, conisaūces, prescriptiōs, & claimes as they myghte haue had before the makinge of this statute. Prouided also, that if any persone be now within the age. of. xxi. yeares or couerte baron, or in prison, or out of this realme, now hauinge cause to bryng any of the sayde wryttes or actions, or to make any auowryes, conysaunces, prescription, or claymes it shalbe lawful to such persone, to sue or brynge anye of the sayde actions, or to make any of the said auowryes, conisaūces, titles or claymes at any time within syxe yeares next after suche person now beinge within age, shal accomplyshe the age of xxi. yeres, or nowe beinge couerte baron, shall be sole, or now beinge in prison, shalbe at their lybertye, or now being out of this realme, shal come & be within this realme. And that euerye suche persons in theyr sayd actions auowryes conysaunces tytles or claymes to be made sued or commēced within ye said syxe yeares, shal alledge the season of their auncestours, or predecessours, or of their owne possessyon, or of the possession of those whose estate they shall then clayme. And also within the same syxe yeares shall haue lyke auauntage in the seme, as they might haue had before the making of this acte. ¶ Prouyded also, ye if the said persōs now beinge within age, or couert baron, in prison or out

out of this realme, do dye within age, or beyng couerte, or in prison, or out of this realme or de tease, within. vi. yeres next after they shall accō plishe their full age, or shall be at large within this realme, or shal become sole, & no determy- nation or iudgement had of such tytle, actyons or rightes so to them accrewed, then the nexte heire of suche persons shall enioye lyke auaun- tage to sue demaunde, auowe, declare or make their sayd tytles, claimes or prescriptions with in syre yeares nexte after the death of suche per sonnes, as the same infaunte after his full age, or the sayd woman couerte after the deathe of her husbande, or the same personne beynge out of this realme after hys repayre or commynge into the same, or the sayd personne imprisoned after his enlargemente and commynge out of prison, myghte haue had within. vi. yeares then next ensuynge by force of the prouysion last be- fore rehersed.

¶ Prouided also, that yf anye persons before the sayde feaste of the Ascension sue any of the saide actions, or make anye auowrye, tytle, or clayme, and the same happen by the deathe of anye the parties thereunto, to bee abated before iudgement or determination therof had, thē the said persons beyng demaundauntes, or auow- aunce, or makynge any suche consaunce pre- scription, title, or clayme beynge then on lyue, and yf not then theyr nexte heyres, maye com- mence theyr actyon, and make theyr auow- rye conysaunce or claime vpon the same matter within one yere next after such suite abated and shall haue like auauntage to sue demaunde a- uowe declare or make their said title, claimes,

or prescriptions within the said one yere, as the demaundauntes in such writ or suite abated, or as such as syd auowe or make conisaunce, title clayme or prescription might haue enioyed in ye sayd former action or suite.

Attait vp on tayle verdit.

¶ Prouided furthermore, ye yt anye false verdit hereafter be geuen in any of ye said actions, suites, auowrys, prescriptiõs, titles or claimes then the parti greued may haue his attaint vpõ euery such verdit, and the plaintife in the same attaynt vpon iudgemẽt for him geuẽ shal haue lyke recouery, execution and other aduauntage as heretofore hath bene vsed.

☞ Of fynes.

Fynes haue theyr name, bycause they make a fynall ende and determination of all suites, strifes and debates betwene men. For the due leuyng wherof it was enacted in the.iiii. yeare of kynge Henrye the.vii. that they muste be solempnye before the Justices of the common place, rede and proclaymed the same terme, and three termes nexte folowynge the ingrosement, at whiche times all the plees muste sease. And suche fynes shall be a sufficiente barre and discharge agaynste al personnes, saupnge women that be couerte baron, if suche women be not priuey to the same fyne, or suche as be within age, in prison oute of the realme, or out of their right mindes. But these fynes shall not conclude ne barre all straũgers whiche haue right to enter or to haue action, yf they come within.v.yeres after such proclamati

on

ons made or (in case ye cause of action falleth vn to the after ye fine so duely leuied) if they come and commence their action and suyte within.v yeares next after such cause of action to the accrued. And they may sue agaynste the takers of the prokyttes. But if they that haue right thereto be within age, in prison, couerte baron, oute of the realme or not in theyr right memory, the their title or entre shall be saued vnto them till they be of ful age, out of prison, discouered and sole within the realme or of right minde, & the within fiue yeres after their actiō or entre must be sued or made with effecte.

¶ Also by the sayd statute it shalbe a good plee for all straungers to say, that they that wer parties to the fyne nor none other to their vse, had any thing in the tenementes, or lādes at ye tyme of the leuying of the fine.

¶ Furthermore in the.xxxii.yeres of this kinge for thaduoidinge of certaine doubtes and ambiguities, it was enacted, that all fynes as well heretofore leuyed, as hereafter to be leuyed according to the sayde statute of Henry the.vii. by anye person of the full age of.xxi. yeares, of any landes or other hereditamentes, beyng before the fyne leuyed, in any wise tailed vnto hī, or to any of his auncestours in possessiō, reuersion remaynder or in vse, shalbe immediatly after the same fine leuied ingrossed, & proclamations made a sufficient barre and discharge for euer as wel against him, and his heyres claymynge the same onelye by force of any such in tayle, as against all other to their vse, so that the same fynes be not leuyed by any woman after the death of her husband, contrary to ye sta- Barre.

Anno. xi. Henr. vii. tute made the. xi. yere of Henry the seuenth of landes and tenemētes of the inheritaūce or purchase of her husbād or of any of his auncestors geuen to her in dower, for terme of lyfe, or in tayle in vse or in possession. Excepted also all kynes leuyed or to be leuied of any suche lādes or hereditamētes of the owners therof by any spyrial acte of parliament made sithe the sayde fourth yere of Henry the. vii. be restrayned frō makynge anye alienacions, discōtinuaunces or other alienacions of the same. Also of such landes as be now in suite and variance in any of ye kynges courtes, or wherof anye euidences be now in demaund in the chauncery, or which be all ready recouered. Excepted also kynes leuied or to be leuied by any person, of landes or tenementes graunted to hym or to his auncestours in tayle, either by the kynges letters pattentes or by vertue of any acte of parliment, whereof the reuersion is in the kyng. And confyrmed in the. xxxiiii yeare of Henry the. viii.

Anno. iii. Hen. vii.

¶ Of testamentes or last wylles.

r. fol. 183. a. diuision.

TEstamentum in latyn is almuch to say as mentis testacio, that is a declaration or witnessing of a mans mynde. And there be two sortes of testamentes. The one is called testamentum scriptū, ye is, a wrytten testamente, or a laste wyll by wrytynge, and the other is called testamentum nuncupatiuum, a testament nuncupatiue, which is whē a manne doeth expresse by mouthe his last will and testament without writing, by callynge before him certayne of his neyghbours in whose pre-

Written testament

The testament nūcupatyue.

presence he doeth sygnifye by woordes his laste wynde & wyll. And thys for most part mē vsed to do when for feare of sodennes of death, they dare not abide the writinge of their wyll. And this will (onlesse it be in certayne cases) is as stronge and as sure, as is a testamente or laste wyll put in writynge and sealed with the seale of the testatour.

¶ Also thoughe a testament by wryting be not sealed with the seale of the testatoure, yet is the testament good and effectuall in the lawe.

¶ And ye shall also marke, that where a man maketh ones his testament and will, and afterwarde maketh another wyl by woordes, yf hys last wyl be preued before the ordinary & by him putte in wrytinge and insealed wyth his seale, such last wil shall auoide the first will, onlesse it be in speciall cases, & so alway the latter wyll and testament shall auoyde the former.

¶ Finally by an act made the.xxi.yere of king Henrye the eyghte, it was ordeined that where parte of the executours named in the testament wherin any landes or tenementes be wylled to be sold by them, refuseth to take vpon them the administration, and ye residue do take ye charge and administration vpon them, in this case all bargaynes and sales in ye said landes made onlie by those executours ye take the administration of the testament vpon them, shal be as good and effectuall, as if al the resydue of the executours so refusyng had ioyned in the making of the bargayne and sale. Executours.

¶ The difference betwene executours and administratours.

Of executours.

Executours is when a manne maketh hys testamente and last wyll, and therein nameth the personne whiche shal execute hys testament, then he that is so named is hys executoure, and such an executour shal haue an action agaynst euery dettoure of his testatour. And if ỳ executours haue assetes, that is to say, sufficient in their handes then shal euery one to whō the testatour was in det haue actiō agaiste the executour if he haue an obligatiō or specialtie to shewe. But in euery case where the testatour might wage his law, there no action lieth agaynst the executour.

Assetes in ỳ handes of executours.

Administratoure.

Administratour is he, to whō the ordinary cōmitteth the administration and bestowyng of the goodes of a dead man for defaute of an executour. And actions shall lye agaynst hym and for hym as for an executour, and he shalbe charged to the value of the goodes of ỳ dead, and no further, yf it be not by his false plee, or for that he hath wasted the goods of the deade. But yf the administratours die, hys executours be not administratours, but it behoueth the ordinary to cōmyt a newe administration. Howbeit yf a straunger I meane hym that is neyther executour named in the testament and last will, nor yet administratour appoynted by the ordinarie wyll take the goodes of the deade, and minister of his own head and minde withoute lawefull auctoritie, this person shalbe charged and sued as an executour, and not as administratour in an action which is brought against hym by any creditour. But yf the ordynarye make a letter ad colligēdum bona de frutti, he that hath such a letter is not administratour, but the actiō lieth

Executor of his owne wronge.

F. 4. i. g.

eth in this case agaynst the ordinary, as wel as pf he toke the goods by his own hand, or by the hande of any other his seruaunt by anye other commaundement. A letter ad colligē

¶ An acte of probate of testamentes made. An. xxi. H. viii.

NOthynge shal be taken by anye hauyng auctoryte to take probation insynuation or opprobation of any testament where the goodes of testatoure doe not amount aboue the value of. c. s. excepte to the scribe for writynge thereof. vi. d. And for the commissyon of ministration of the good of any dyinge intestate not beynge lykewyse aboue. c. s. vi. d. Also none hauynge power to take probate of testamentes shall refuse to approue testamentes beyng lawfully offered vnto them in wryting with wax therto affixed ready to be sealed, so ẏ they be lawfully proued before ẏ same ordenary to be true. And whē the goods of the testatour do amount aboue an. c. s and not excede. xl. li. none shall take for the probation regestringe, sealing and wryting of any suche testamente aboue. iii. s. vi. d. wherof to be to them that haue auctoritye to take the probation. ii. s. vi. d. and the other. xii. d. to be scrybe for regestringe.

¶ And where the goods amounte aboue. xl, li. then only. v. s. to be taken, wherof to be to them that haue auctoritie to take the probation. ii. s. and. vi. d. and the other. ii. s. vi. d. to the scrybe

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for the regestringe, or els yf he refuse that. ii.s. vi.d. the he to haue for euery.x.lines euery line conteyning in length. x.ynches.i.d.

¶ And they that haue auctoritie as is aboue sayde, shal approue insinuate seale and regester the tenementes, and delyuer them sealed wyth the seale of their office to ye executours for the sum aboue sayde, and that w̃ conuenient spede without any frustratory delaye.

¶ And yf any person dye intestate or the executours refuse to proue the testamente, then they hauyng auctoritie as is aboue saide, shal graũt the administration of the goodes to the wydow of the person deceased or to the nexte of kynde or to both after their discretion, takynge suretie of them for true administration of ye goods and dettes, whiche they shall be so auctorised to minister. And where one or diuerse claime the administration as nexte of kynne, which be egal in degree of kinred, or where any one persõ desireth ye administration as next of kyn, wher in dede diuers persons be in equalitie of kynred, the in any such case the ordinarye shall be at libertie to take one or mo making request. And where diuers require the administration or where but one or mo of them, not all being in like degree, make request, then the ordinarye shal admit the widow and hym or them onelye making request or anye of them, takynge nothynge for the same, where the person dissease d died not worth. c.s. And if he dyed worthe. C.s and not aboue. xl. li. then. ii.s. vi.d. onely to be taken. And the executour or administratoure callyng to him the dettours two at the least, or suche persons to whom any legatie was made

Suerye.

and

and if they refuse the.ii.next of kinne to ye person deceased and in theyr defautes.ii.other honest persons shall by theyr discretions make a true inuentorie indented of all the goodes, whiche persones swearing before the bysshop or his officers to be true, shal deliuer the one part therof vnto the, and ye other kepe him selfe.

Inuentorye of goodes.

And none hauinge auctoryte to take probate of testamentes vpon payne contayned in thys statute shall refuse, to take any suche inuentorye presented or tended to them.

¶ Prouided, yf anye persone shall dispose or will by his testament anye landes or hereditamentes to be solde, that the money or profytes of the same be accompted for goodes or cattels. And they hauyng the auctoryte aboue sayde vpon the delyuerye of the seale and signe of the testatour shal cause the same to be defacted and incontinent shal redeliuer it to the executour without any claime, and if anye require a copye of the testament and inuentorye then they hauing auctoryte or their ministers, shal withoute delay deliuer them a copye takyng therfore and for the regestryng of the same as before or els for euerye ten lines.i.d.

¶ Prouyded, that where they hauinge auctoryte as is aboue sayde haue vsed to take lesse for the probate of testamentes or other thinges concernynge the same, then is here speryfied, they shal take as they dyd before this acte.

¶ Howe if anye that haue auctoryte to take probate of testamētes or their ministers to attempt agaynste this acte, they shall forfayte for euery time to the party greued as much money as they shal take cōtrary to this acte. And ouer

that

for the regestringe, or els yf he refuse that. ii.s. vi.d. thē he to haue for euery. x. lines euery line conteyning in length. x. ynches. i.d.

¶ And they that haue auctoritie as is aboue sayde, shal approue insinuate seale and regester the tenementes, and delyuer them sealed wyth the seale of their office to ye executours for the sum aboue sayde, and that w̄ conuenient spede without any frustratory delaye.

¶ And yf any person dye intestate or the executours refuse to proue the testamente, then they hauyng auctoritie as is aboue saide, shal graūt the administration of the goodes to the wydow of the person deceased or to the nexte of kynde or to both after their discretion, takynge suretie of them for true administration of ye goods and dettes, whiche they shall be so auctorised to minister. And where one or diuerse claime the administration as nexte of kynne, which be egal in degree of kinred, or where any one persō desireth ye administration as next of kyn, wher in dede diuers persons be in equalitie of kynred, thē in any such case the ordinarye shall be at libertie to take one or mo making request. And where diuers require the administration or where but one or mo of them, not all being in like degree, make request, then the ordinarye shal admit the widow and hym or them onelye making request or anye of them, takynge nothynge for the same, where the person dissease d died not worth. c.s. And if he dyed worthe. C.s and not aboue. xl. li. then. ii.s. vi.d. onely to be taken. And the executour or administratoure callyng to him the dettours two at the least, or suche persons to whom any legatie was made

Sueryye.

and

and if they refuse the.ii.next of kinne to ye person deceased and in theyr defautes.ii.other honest persons shall by theyr discretions make a true inuentorie indented of all the goodes, whiche persones swearing before the bysshop or his officers to be true, shal deliuer the one part therof vnto the, and ye other kepe him selfe.

Inuentorye of goodes.

And none hauinge auctoryte to take probate of testamentes vpon payne contayned in thys statute shall refuse, to take any suche inuentorye presented or tended to them.

¶ Prouided, yf anye persone shall dispose or will by his testament anye landes or hereditamentes to be solde, that the money or profytes of the same be accompted for goodes or cattels. And they hauyng the auctoryte aboue sayde vpon the delyuerye of the seale and signe of the testatour shal cause the same to be defacted and incontinent shal redeliuer it to the executour wout any claime, and if anye require a coppe of the testament and inuentorye then they hauing auctoryte or their ministers, shal withoute delay deliuer them a coppye takyng therfore and for the regestryng of the same as before or els for euerye ten lines.i.d.

¶ Prouyded, that where they hauinge auctoryte as is aboue sayde haue vsed to take lesse for the probate of testamentes or other thinges concernynge the same, then is here speryfied, they shal take as they dyd before this acte.

¶ Howe if anye that haue auctoryte to take probate of testamētes or their ministers to attempt agaynste this acte, they shall forfayte for euery time to the party greued as much money as they shal take cōtrary to this acte. And ouer

that

that.x.li. the one halfe to the kinge the other to the partye greued, that wyll sue by action of det byl informatiõ or otherwise in any of ye kiges courtes, wherin no essoine protectiõ nor wager of the lawe shalbe alowed. And euery of them shalbe charged for him selfe & for none other.

¶ Prouided, that euerye one hauinge auctoritie aboue sayd, may cal before them euery person named executour, to the intẽt to proue and refuse the testament and to bring inuentoryes and to do euerye other thynge concernynge the same, as they myght before this acte, so that neither they nor their ministers shal take aboue the fees limited by this acte.

¶ Howe landes and tenementes maye bee by testament or otherwise disposed, inacted. An. xxxii. H. viii.

EVerye person hauing landes or other hereditamentes holden in socage, or of the nature, and not hauinge anye landes or .. .. hereditamẽtes holdẽ of ye king by knightes seruices, or socage tenure, in chieke, or of the nature of socage tenure i chieke, nor yet of anye other persone by knyghtes seruice: maye giue, dispose, and deuise, as wel by testament in wrytyng as otherwyse by any acte lawefullye executed in his lyfe, all his sayde landes or hereditamentes or any of them.

¶ And euery persone hauing landes or other hereditamentes holden of the kynge in socage or of the nature of socage tenure in chieke, and hauing also any other landes or heredytamentes holden of any other persone in socage or of

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the nature of socage tenure, and not hauinge any hereditamētes holdē of the king or of anye other by knyghtes seruice may from the sayde time gyue and deuise aswell by testamente in wryting, as otherwise by any acte lawfully executed in his lyfe, all and euerye of them at his pleasure. Sauinge to the kinge all his ryghte of primer seases and reliefes and also all other ryghtes and dutyes for tenures in socage or of the nature of socage tenure in chiefe, as heretofore hathe bene accustomed, the same to be takē and sued out of the kinges hādes by the persō to whom anye such lādes shalbe disposed or deuised in like maner as hathe bene vsed by anye heire or heires before the makynge of this statute. And sauinge and reseruynge also fines for alienations of such landes & hereditamētes holden of the kynge in socage or the nature of Socage tenure in chiefe, wherof shalbe any alteration of freholde or inherytaunce made by wyl or otherwyse as is aforesayde.

Primer season reliefes.

¶ Item all persones hauing landes or other hereditamentes of estate of inheritaunce holden of the kynge in chiefe by knightes seruice or of the nature of knyghtes seruice in chiefe maye gyue, wyl or assygne two partes of the same in thre partes to be deuided or els as muche thers of as shal amoūt to ꝑ yerely value of two partes of the same in three partes to be deuided in certainty and by special diuisions as it may be knowē i seueralty for ꝑ auaūsemēt of his wife ꝑferment of his childrē & paimēt of his dets or otherwise at his pleasure. Sauing to the kinge aswel the wardeshyp and prymer season, of as muche as shal amoūt to the clere yerely value of

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the thyrde parte therof without diminutiõ dower, fraude, couetne, charge, or abridgemẽt therof, as also all fines for alyenations of all such landes holden of him by knightes seruyce in chiefe whereof shall be anye alteration of freehold or of iheritaũce made by wil or otherwise ¶ And euery person hauinge landes or tenementes of estate of inheritaunce holden of the kynge in chyefe by knyghtes seruice, and other landes holden of him or of anye other by knightes seruice or otherwyse maye giue or assygne by his testament or otherwyse as is aforesayde two partes therof in thre partes to be deuided or els as much therof as shal ertẽde to ye yerely value of two partes or be deuided i certaintie. Sauinge to the kynge aswell the wardeshyppe and primer season of as muche, as to amounte to the yerely value of the thyrd parte, without deminuation. ꝛc. As also for al fines for alienation as is aboue sayde.

Fynes for alyenacyons.

¶ Item euerye person holdyng landes or tenementes onely of anye other then the king by knyghtes seruice and other landes and tenemẽtes in socage or of the nature of socage tenure may gyue dispose or assure by testament or otherwyse two partes therof holden by knightes seruice or as much as shal amounte to the full yerely value of two partes. And also al ye lãdes and tenementes holden by socage or of the nature of socage tenure at his pleasure. Sauinge to the lorde of the landes and tenementes holden by knightes seruice for his wardeshippe as much therof as shal amoũt to ye clere yerely value of the thyrde parte without diminution. ꝛc. ¶ And euery person holding onely of the king by

by knyghtes seruice, but not in chieke, or holdyng of the kynge by knyghtes seruice, and not in chieke, and also other hereditamentes of others by knyghtes seruice, and holdynge also others hereditamentes of anye other person in Socage or of ye nature of Socage tenure, may geue and assure by his laste wyll or otherwyse two partes of that is hold of the king by knightes seruice and two partes of that is holden of anye other persone by knyghtes seruice, or as muche of either of them as shal amount to the full yerely value of two partes and also al hys landes and tenementes so holden in socage, or of the tenure of Socage tenure, sauynge as well to the kinge the wardeship of as muche as shall extend to the cleare yerely value of ye third part of the same so holden of him by knyghtes seruite withoute diminution. ꝛc. As also to the lordes of whome any of the sayde landes bene holden by knyghtes seruice for the wardship as much of ye same as shal amoũt to ye clere yerely value of ye third part in maner aboue declared ¶ And if that third part which in anye of the cases aboue sayd shall come to the king do not amount to the cleare yerely value of the ful. iii. part of all the sayd hereditamentes wherof the kynge shalbe entiled to haue the custody or prymer season: then the kynge maye take into his handes as much of the other two parties of the sayde hereditamentes as with that of the same hereditamentes remainyng in his handes shall make vp the cleare yerely value of ye third part therof so to be hadde to hym in title of wardeshyppe and prymer season. And lyke benefite to be geuen to euery lorde of whome anye suche

hereditament shall be holden by knyghtes seruyce concerning onely his thirde parte for tytle of wardeshippe.

¶ Also al persons shal sue their liberties for possessions, reuersions, or remaynders, & also paye reliefes, and heriotes like as they shoulde haue done before the makyng therof. And fynes for alienatiõs shalbe paid in ỳ chaũcery vpõ wryttes of entre in the post to be obtayned there for common recoueries to be suffred of any lãdes holden of the kynge in chiefe in like maner as is vsed vpon alienations of landes so holdẽ in chiefe by fyne or feoffement.

¶ Prouided that in such cases where fines for alienations shalbe paid in ỳ chaũcery for wryttes of entre in the post as is afore said none other fine shalbe payd there for any such writtes

¶ Item where two or more persons holde of ỳ kyng by knyghtes seruice iointly to them, and to the heires of one of thẽ, and he that hathe the inheritaunce therof dieth, his heire being within age, the kynge shall haue the ward and mariage of the body of suche heyre the lyke of the freholder or freholders of the landes so holden by knyghtes seruyce notwithstandynge.

¶ Sauinge to all women suche rights and tytle of dower as they owe to haue of anye lãdes or tenemẽtes to be assigned vnto thẽ out of ỳ two partes of the sayd landes or tenemẽtes seuered from the third part as is aboue saide and not otherwyse. And sauynge also to the kynge the reuersion of all suche tenementes in iointure, and dower immediately after the death of such tenauntes, if they shall happen to die, durynge the none age of the kynges wardes.

¶ Of mariages inacted. An. xxxii. H. viii.

IT is inacted, that frō the first day of Julye in the yeare of our Lorde a thousande fyue hundreth and fourtye, all mariages within this church of Englande cōtracted betwene lawefull persons, as by thys acte we declare al persōs to be lawful ý be not prohibited by godes lawe to mary, suche mariages beynge contracte & solempnised in the face of ý church and consummate with bodely knowledge or fruite of childrē or child being had therin betwene the parties so maried shalbe demed and takē to be lawful, good and indissoluble, notwithstādinge any precontracte of matrymonye not consummate with bodelye knowledge either of the persons so maried or both shal haue made w̄ anye other before the tyme of contractyng that mariage whiche is solempnised and consummate or wherof suche fruite is ensued or maye ensue as afore, and notwithstandynge any dispensacion prescription, lawe or other thynge graunted or confirmed by acte or otherwyse. And that no reuersion or prohibition (Gods lawe excepte) shall trouble, impeche anye mariage withoute leuitecall degrees. And that no person shal after the said first day of July afore said, be admytted to anye of the spiritual courtes within this the kinges reame or any his other lādes & dominions, to any processe, plee or allegation cōtrary to this acte.

FINIS.

Tabula.

HEre it muste bee remembred that the number in this Table folowynge, doeth expresse and shewe the leafe where you shall fynde youre desyre, and this letter A maketh mention of the first page or syde, and this letter B the seconde page or syde.

Finis Tabula

W. S.

Imprinted at London in Fletestrete at the signe of the Princes armes by Thomas Marche.

Anno. M. D. L. VI.